DETENTION AND CORRECTIONS CASELAW CATALOG

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Volume One: *Sections 1-7*

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Index and Topic Finder

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Major section headings are shown in **bold print and are underlined.** Numbers after entry identify the section(s) in which the word or phrase can be found.

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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.

1938

U.S. Supreme Court
RIGHT TO COUNSEL

Johnson v. Zerbst, 304 U.S. 458 (1938). It is the duty of a federal court in the trial of a criminal case to protect the right of the accused to counsel, and if he has no counsel, to determine whether he has intelligently and competently waived the right. If the accused is not represented and has not competently and intelligently waived his constitutional right, the sixth amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. (Federal Penitentiary, Atlanta)

1941

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

Ex Parte Hull, 312 U.S. 546 (1941). Hull, an inmate in the Michigan State Prison, challenges a prison rule requiring that all legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals prepared by inmates be submitted to prison authorities who would forward them to the appropriate court only if the authorities felt they were properly written. Hull initiated this action when his petition for a writ of habeas corpus was sent to the legal investigator for the state parole board, who informed Hull that the petition would be unacceptable to the court. A second effort to send out a petition with his father failed when a guard confiscated the petition.

HELD: In holding the state rule requiring that all legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals prepared by the inmates be submitted to prison authorities who would forward them to the appropriate court only if the authorities felt they were properly written was invalid, the court stated, "The state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus." 312 U.S. at 549.

HELD: The inmates pleading challenging conditions of confinement may also be used to plead cases of action under 42 U.S.C. Section 1983 to which exhaustion of remedies does not apply. 404 U.S. at 251. (State Prison of Southern Michigan)

1961

U.S. Supreme Court
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PRO SE LITIGATION

Smith v. Bennett, 365 U.S. 708 (1961). A state statute requiring an indigent prisoner of the state to pay a filing fee before his application for a writ of habeas corpus, or the allowance of his appeal in such proceedings will be docketed in a state court, violates the fourteenth amendment. (Iowa State Penitentiary)

1963

U.S. Supreme Court
PRO SE LITIGATION

Lane v. Brown, 372 U.S. 477 (1963). A system whereby a person with sufficient funds can appeal as of right to a state supreme court from the denial of a writ of error coram nobis, but which precludes an indigent defendant from doing so unless the public defender agrees, is violative of the fourteenth amendment. (State of Indiana)

1966

U.S. Supreme Court
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Miranda v. Arizona, 384 U.S. 436 (1966), reh'g. denied, 385 U.S. 890. In each of the cases comprising this decision, the defendant while in police custody was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. None of the defendants was given a full and effective warning of his rights at the outset of the interrogation process. In all four cases the

questioning elicited oral admissions, and in three of them signed statements as well, which were admitted at their trials. All defendants were convicted and all convictions, except one, were affirmed on appeal. **Held:**

1. The prosecution may not use statements, whether exculpatory or inculpatory, stemming from questioning initiated by law enforcement officers, after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way, unless it demonstrates the use of procedural safeguards effective to secure the fifth amendment's privilege against self-incrimination. Pp. 444-491.

(a) The atmosphere and environment of incommunicado interrogation as it exists today is inherently intimidating and works to undermine the privilege against self-incrimination. Unless adequate preventive measures are taken to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice. Pp. 445-458.

(b) The privilege against self-incrimination, which has had a long and expansive historical development, is the essential mainstay of our adversary system and guarantees to the individual the "right to remain silent unless he chooses to speak in the unfettered exercise of his own will," during a period of custodial interrogation as well as in the courts or during the course of other official investigations. Pp. 458-465.

(c) The decision in Escobedo v. Illinois, 378 U.S. 478, stressed the need for protective devices to make the process of police interrogation conform to the dictates of the privilege. Pp. 465-466.

(d) In the absence of other effective measures the following procedures to safeguard the fifth amendment privilege must be observed: The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him. (e) If the individual indicates, prior to or during questioning, that he wishes to remain silent, the interrogation must cease; if he states that he wants an attorney, the questioning must cease until an attorney is present. Pp. 473-474.

(f) Where an interrogation is conducted without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his right to counsel. P. 475.

(g) Where the individual answers some questions during in-custody interrogation he has not waived his privilege and may invoke his right to remain silent thereafter.

(h) The warnings required and the waiver needed are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement, inculpatory or exculpatory, made by a defendant. Pp. 476-477.

2. The limitations on the interrogation process required for the protection of the individual's constitutional rights should not cause an undue interference with a proper system of law enforcement, as demonstrated by the procedures of the FBI and the safeguards afforded in other jurisdictions. Pp. 479-491.

3. In each of these cases the statements were obtained under circumstances that did not meet constitutional standards for protection of the privilege against self-incrimination. (Arizona)

1968

U.S. Supreme Court
42 U.S.C.A.
Section 1983
LEGAL MATERIAL
EXHAUSTION

Houghton v. Shafer, 392 U.S. 639 (1968) (Per Curiam). Houghton, a Pennsylvania state inmate, brought this 42 U.S.C. Section 1983 action in a U.S. District Court, claiming that prison authorities violated his civil rights by confiscating legal materials Houghton acquired for pursuing his appeal. The legal materials were in the possession of another inmate at the time they were confiscated, in violation of prison rules.

The district court dismissed the complaint on the sole ground that Houghton had not alleged exhaustion of state administrative remedies. The Third Circuit Court of Appeals affirmed without opinion, and Houghton petitioned the Supreme Court for a writ of certiorari. (Reversed)

HELD: On the basis of Monroe v. Pape, 365 U.S. 167; McNesse v. Board of Education, 373 U.S. 668; and Damico v. California, 389 U.S. 416, exhaustion of state remedies [such as taking a dispute to a "classification and treatment clinic; addressing the superintendent deputy commissioner of correction or the commissioner of correction; seeking final appeal to the state attorney general] is not a necessary requisite to initiation of a 42 U.S.C. Section 1983 action. 392 U.S. at 640. (Pennsylvania Department of Corrections)

1969

U.S. Supreme Court
LEGAL MATERIAL
LAW BOOKS
TYPEWRITER
JAIL HOUSE
LAWYERS

Johnson v. Avery, 393 U.S. 483 (1969). Johnson, a state prisoner serving a life sentence at the Tennessee State Penitentiary, was placed in a maximum-security area of the facility for violation of a prison regulation prohibiting inmates from assisting other inmates in preparing writs. In a "motion for law books and a typewriter" Johnson sought relief from confinement in the maximum-security area. The U.S. District Court viewed the motion as a petition for a writ of habeas corpus, and after a

hearing, ruled that the prison regulation was void because it, in effect, barred illiterate persons from access to federal habeas corpus, and conflicted with 28 U.S.C. Section 2242 (allowing application for a writ of habeas corpus by the person for whose relief it is intended, or by someone acting in his behalf). The Sixth Circuit Court of Appeals reversed, ruling that the interest of the state in preserving prison discipline justified any limitations the regulation might place on access to federal habeas corpus. Johnson sought certiorari from the U.S. Supreme Court (Reversed and Remanded).

HELD: [T]he state may impose reasonable restrictions and restraints upon the acknowledged propensity of prisoners to abuse both the giving and the seeking of assistance in the preparation of applications for relief: for example, by limitations on the time and location of such activities, and the imposition of punishment for the giving or receipt of consideration in connection with such activities.... But unless and until the state provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, it may not validly enforce a regulation...barring inmates from furnishing such assistance to other prisoners. 393 U.S. at 490.

DISSENTING: White, J. Black states: "[U]nless the help the indigent gets from other inmates is reasonably adequate for the task, he will be as surely and effectively barred from the courts as if he were accorded no help at all. 393 U.S. at 499. I doubt the problem of the indigent convict will be solved by subjecting him to the false hopes, dominance, and inept representation of the average unsupervised jail house lawyer. 393 U.S. at 501. (State Penitentiary, Tennessee)

1970

U.S. District Court
PRIVILEGED COMMUNICATION

Carothers v. Follette, 314 F.Supp. 1014 (S.D. N.Y. 1970). Mail from inmates to the court cannot be censored, read, or refused delivery. (Green Haven State Prison, New York)

U.S. District Court
LAW LIBRARY

Cruz v. Beto, 329 F.Supp. 443 (S.D. Tex. 1970). Time limits may be set on use of law library to insure that one inmate does not deny other inmates equal opportunity. (Texas Department of Corrections, Ellis Unit)

U.S. District Court
LAW LIBRARY

Gilmore v. Lynch, 319 F.Supp. 105 (N.D. Calif. 1970), aff'd, 92 S.Ct. 250 (1970). The district court stopped short of requiring law libraries, but firmly established law libraries as a reasonable alternative. (California Department of Corrections)

U.S. District Court
LAW BOOKS

Palmigiano v. Travisono, 317 F.Supp. 776 (D. R.I. 1970). Whether the inmates have a right of reasonable access to law books is not appropriate for preliminary relief. (Adult Correctional Institution, Rhode Island)

1971

U.S. District Court
ACCESS TO ATTORNEY
PRIVILEGED COMMUNICATION

Conklin v. Hancock, 334 F.Supp. 1119 (D. N.H. 1971). Inmate in isolation should have all privileges of other inmates except those that involve mixing with the general population. Attorney for inmate in isolation must be allowed to confer privately with inmate and other inmates who may be witnesses in his behalf. Outgoing mail of security risk, except mail to public officials and attorney of record may be read to determine whether escape plans are being made. Incoming "legal" mail is to be delivered promptly and unopened. Other incoming mail may be inspected for contraband and read to extent necessary to foil escape plans or censor pornography or inflammatory writing. (New Hampshire State Prison, Concord)

U.S. District Court
LEGAL ASSISTANCE
JAIL HOUSE LAWYERS

Cross v. Powers, 328 F.Supp. 899 (W.D. Wisc. 1971). The court ruled that limiting legal help to habeas corpus assistance does not provide prisoners an alternative to inmate mutual legal assistance. (Wisconsin State Prison)

U.S. Supreme Court
LAW BOOKS
LEGAL MATERIAL
42 U.S.C.A. Section 1983

Cruz v. Hauck, 404 U.S. 59 (1971) (Per Curiam). Relying on 28 U.S.C. Section 1343 (3), 28 U.S.C. 2201 & 42 U.S.C. Section 1983, inmates of the Bexar County Jail, Texas, initiated this action against the sheriff seeking to restrain the sheriff's interference with their reasonable access to hardbound law books and other legal material. The sheriff contended that limiting hardbound books was part of an overall scheme to prevent smuggling of contraband.

The U.S. District Court for the Western District of Texas dismissed the complaint, without a hearing. A request to appeal in forma pauperis was denied by the judge on the grounds that any appeal would be frivolous, without merit, and not taken in good faith. The Fifth Circuit Court of Appeals also denied the request and the inmates petitioned the Supreme Court for a writ of certiorari contending the denials violated their rights of equal access to the courts.

HELD: In a per curiam opinion the Court granted the motion to proceed in forma pauperis and also granted the petition for a writ of certiorari. Vacating the lower

court decision, the case was remanded to the Fifth Circuit Court of Appeals for consideration in light of Younger v. Gilmore, 404 U.S. 15 (1971). 404 U.S. at 59.

NOTE: Justice Douglas in a separate concurring opinion expanding on the brief per curiam opinion stated: "Prisoners are not statistics, known only to a computer, but humans entitled to all amenities and privileges of other persons, save as confinement and necessary security measures curtail their activities. Whatever security measures may be needed regarding books, it is not conceivably plausible to maintain that essential books can be totally banned." 404 U.S. at 61. (Bexar County Jail, Texas)

U.S. Appeals Court
JAIL HOUSE LAWYERS

Novak v. Beto, 453 F.2d 661 (5th Cir. 1971). If the institution provides an adequate alternative, a regulation prohibiting "jail house lawyers" would be upheld. (Texas Department of Corrections)

U.S. District Court
ACCESS TO ATTORNEY

U.S. ex rel. Stevenson v. Mancusi, 325 F.Supp. 1028 (W.D. N.Y. 1971). Allowing prisoners to send letters to attorneys is not an adequate alternative to allowing a prisoner to consult with other prisoners for assistance. (State Prison, Attica, New York)

U.S. Supreme Court
LAW BOOKS
LEGAL MATERIALS
LEGAL ASSISTANCE
LAW LIBRARY

Younger v. Gilmore, 404 U.S. 15 (1971) (Per Curiam). Citing Johnson v. Avery, 393 U.S. 483 (1969), the court affirmed the judgment of the District Court for the Northern District of California in Gilmore v. Lynch, 314 F.Supp. 105 (1970).

In Gilmore, inmates incarcerated in California correctional facilities challenged certain rules and regulations of the Department of Corrections concerning access to law books, legal materials, lay assistance on preparing documents for court, and procedures of the state law library regarding circulation of legal materials to inmates.

HELD: The U.S. District Court enjoined the enforcement of a regulation which limited access of legal books for inmates to the following:

1. State Penal Code
2. State Welfare & Institutions Code
3. State Health & Safety Code
4. State Vehicle Code
5. U.S. & State Constitutions
6. A recognized Law Dictionary (such as Black's)
7. A text on State Criminal Procedures
8. A subscription to California Weekly Digest
9. State Rules of Court
10. Rules of U.S. Court of Appeals (Ninth Circuit)
11. Rules of U.S. Supreme Court

314 F.Supp. at 112.

The district court did not indicate which books would be acceptable. However, it did note the absence of the following: Annotated Codes, U.S. Codes, U.S. Reports, Federal Reports, State Reports, Rules of Federal District Courts, Treatises, Journals (Law Week).

HELD: The Department of Corrections was given the choice of either expanding the existing list of basic codes and references or adopting some new method to satisfy the legal needs of inmates. 319 F.Supp. at 112. (California Correctional System)

1972

U.S. District Court
ACCESS TO ATTORNEY

Brenneman v. Madigan, 343 F.Supp. 128 (N.D. Ca. 1972). Pretrial detainees have a first amendment right to visit with attorneys. (Alameda County Jail Facility, California)

U.S. Appeals Court
ACCESS TO ATTORNEY
PRIVILEGED COMMUNICATION
RETALIATION

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

U.S. District Court
ACCESS TO ATTORNEY
PRIVILEGED COMMUNICATION

Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). About the only justification for opening mail to the courts would be the reasonable belief that the letter contained something which presented a physical danger to persons who might handle the letter. "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. Appeals Court
ACCESS TO COURT

Corby v. Conboy, 457 F.2d 251 (2nd Cir. 1972). An inmate's right of access to the court is as complete as that of any citizen. (Great Meadow Correctional Facility, New York)

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
LEGAL ASSISTANCE

McCarty v. Woodson, 465 F.2d 822 (10th Cir. 1972). Limits may be imposed on the time and location of inmate legal assistance and may impose punishment for the giving or receipt of consideration in connection with such activities. (Kansas Penal Institution)

U.S. District Court
JAIL HOUSE LAWYER

Wells v. McGinnis, 344 F.Supp. 594 (S.D. N.Y. 1972). Even when a jail or prison is required to allow the "jail house lawyer" function because it lacks adequate alternatives, officials may reasonably regulate the process. (Green Haven Correctional Facility, New York)

1973

U.S. Appeals Court
ACCESS TO COURTS

Adams v. Carlson, 488 F.2d 619 (7th Cir. 1973). All inmate rights are dependent upon access to the courts. If those rights are to be more than illusory, judicial review is necessary to insure that institution administrators are meeting those rights. (Federal Penitentiary, Marion, Illinois)

U.S. Supreme Court
DUE PROCESS
ACCESS TO ATTORNEY

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. (Wisconsin)

U.S. District Court
LEGAL MATERIALS
TYPEWRITER

Hampton v. Schauer, 361 F.Supp. 641 (D. Colo. 1973). Restrictions on the use of typewriters, legal pads, carbon paper, and duplicating machines has been held to be reasonable. (Colorado State Penitentiary)

U.S. Appeals Court
JAIL HOUSE LAWYER

Heft v. Carlson, 489 F.2d 268 (5th Cir. 1973). The institution may require that inmates receive "jail house lawyer" assistance from within that institution and may refuse to allow assistance from inmates in a different institution. (Leavenworth Federal Penitentiary, Kansas)

1974

U.S. District Court
ACCESS TO ATTORNEY
PRIVILEGED COMMUNICATION
LEGAL MATERIALS

Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Inmates may not be deprived of visits from attorneys, mail from courts and attorneys, telephone calls to attorneys, writing materials or legal papers, nor may they be deprived of correspondence with friends or relatives for disciplinary reasons. (Mecklenburg County Jail, North Carolina)

U.S. Supreme Court
RECOUPMENT
INDIGENT INMATES
ACCESS TO ATTORNEY

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. (Oregon)

U.S. Supreme Court
LEGAL ASSISTANCE
PRIVILEGED
COMMUNICATION

Procunier v. Martinez, 416 U.S. 396 (1974). This is a class action brought on behalf of all inmates incarcerated in California penal institutions challenging inmate mail censorship regulations and a ban against the use of law students and legal paraprofessionals to conduct interviews with inmates.

The U.S. District Court of the Northern District of California found the regulations unconstitutional and enjoined their enforcement. Procunier, Director of the California Department of Corrections, appealed directly to the U.S. Supreme Court. (Affirmed.)

HELD: The regulation prohibiting attorney-client interviews conducted by law students or legal paraprofessionals, which was not limited to prospective interviewers who posed some threat to security or to those inmates thought to be especially dangerous and which created an arbitrary distinction between law students employed by attorneys and those associated with law school programs, constituted an unjustifiable restriction on the right of access to courts. 94 S.Ct. 1814, citing Johnson v. Avery, 393 U.S. 483 (1969).

OTHER RULINGS: Comity did not require that the federal court abstain from declaring the constitutionality of the California Department of Correction regulation relating to inmate mail. 44 S.Ct. at 1805. Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration. In part this policy is the product of various limitations on the scope of federal review of conditions in state penal institutions. But a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights. 94 S.Ct. at 1807.

HELD: [C]ensorship of prisoner mail is justified if the following criteria are met. First the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. Prison officials may not censor inmate correspondence simply to eliminate unflattering or unwelcome opinions or factually inaccurate statements. Rather they must show that a regulation authorizing mail censorship furthers one or more of the substantial governmental interests of security, order and rehabilitation. Second, the limitation of first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Thus, a restriction of inmate correspondence that furthers an important or substantial interest of penal administration will nevertheless be invalid if its sweep is unnecessarily broad. This does not mean... that prison administrators may be required to show with certainty that adverse consequences would flow from the failure to censor a particular letter. Some latitude in anticipating the probable consequences of allowing certain speech in a prison environment is essential to the proper discharge of the Administrator's duty. But any regulation or practice that restricts inmate correspondence must be generally necessary to protect one or more of the legitimate governmental interests identified above. 94 S.Ct. at 1811-1812. (Department of Corrections, California)

U.S. Supreme Court
APPOINTED
ATTORNEY

Ross v. Moffitt, 417 U.S. 600 (1974). An indigent inmate does not have a right to an appointed attorney for preparing discretionary appeals to a state supreme court, nor for petitioning the U.S. Supreme Court for certiorari where the state has provided counsel for appeals of right. "[T]he fact that a particular service might be of benefit to an indigent defendant does not mean that the service is constitutionally required. The duty of the state under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process." 417 U.S. at 616. (Mecklenburg County, North Carolina)

U.S. District Court
LEGAL ASSISTANCE
JAIL HOUSE LAWYER

Wilson v. Beame, 380 F.Supp. 1232 (E.D. N.Y. 1974). Inmates in administrative segregation have the right to jail house legal assistance or some other reasonable alternative, so they can exercise fundamental right of access to the courts. (House of Detention For Men, Brooklyn, New York)

U.S. Supreme Court
42 U.S.C.A.
Section 1983
PRIVILEGED
COMMUNICATION
DUE PROCESS
ACCESS TO
ATTORNEY

Wolff v. McDonnell, 418 U.S. 539 (1974). McDonnell, an inmate in a Nebraska state prison, brought this 42 U.S.C. Section 1983 action on behalf of himself and other inmates, alleging that disciplinary proceedings did not comply with the due process clause of the fourteenth amendment; that the inmate legal assistance program did not meet constitutional standards, and that regulations governing the inspection of mail to and from attorneys were unconstitutionally restrictive. Wolff, warden of the prison was named as the defendant. McDonnell sought injunctive relief and damages.

The U.S. District Court rejected the procedural due process claim. It held the prison's policy of inspecting all incoming and outgoing mail to and from attorneys violated prisoners' access to the courts. Restrictions on inmate legal assistance were not in violation of the Constitution.

The Eighth Circuit Court of Appeals reversed with respect to the due process claim, holding disciplinary proceedings in prisons must comply with the procedural requirements of parole revocation and probation revocation proceedings. On the basis of Preiser v. Rodriguez, 422 U.S. 475 (1973) the court held good-time credits could not be restored on this action but ordered that any disciplinary actions taken as a result of proceedings that failed to comply with procedures as outlined by the court be expunged from prison records. The court affirmed the district court's decision on the attorney-inmate correspondence issue but ordered further proceedings to determine if the state was complying with the directives of Johnson v. Avery, 393 U.S. 483 (1969), in providing legal assistance to inmates. From this decision Wolff petitioned for a writ of certiorari.

HELD: "We think it entirely appropriate that the state require any [letters from attorneys to inmates] to be specifically marked as originating from an attorney, with his name and address being given if they are to receive special treatment." 418 U.S. at 576.

HELD: "It would also certainly be permissible that prison authorities require that a lawyer desiring to correspond with a prisoner, first identify himself and his client to the prison officials, to assure that the letters marked privileged are actually from members of the bar." 418 U.S. at 576-577.

HELD: "As to the ability to open the mail in the presence of inmates, this could in no way constitute censorship, since the mail would not be read. Neither could it chill such communications, since the inmate's presence ensures that prison officials will not read the mail. The possibility that contraband will be enclosed in letters, even those from apparent attorneys, surely warrants prison officials opening the letters." 418 U.S. at 577.

HELD: "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply....[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the constitution that are of general application." 418 U.S. at 556.

The particular disciplinary procedure challenged in this case involved a Nebraska statute allowing loss of good time credits for serious misconduct. The court ruled that minimum requirements of procedural due process must be observed, taking into account the institutional environment, and specifically,

HELD: a. "[W]ritten notice of the charges must be given to the disciplinary action defendant in order to inform him of the charges and to enable him to marshall the facts and prepare a defense. At least a brief period of time after the notice, no less than twenty-four hours, should be allowed to the inmate to prepare for the appearance before the Adjustment Committee." 418 U.S. at 564.

b. "[T]here must be a 'written statement by the fact finders as to the evidence relied on and the reasons' for the disciplinary action." 418 U.S. at 564, (quoting Morrissey v. Brewer) 408 U.S. at 489.

c. "[T]he inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." 418 U.S. at 566.

d. "We think that the Constitution should not be read to impose the [cross-examination] procedure at the present time, and that adequate basis for decision in prison disciplinary cases can be arrived at without cross-examination." 418 U.S. at 568.

e. "At this stage of the development of these procedures, we are not prepared to hold that inmates have a right to either retained or appointed counsel in disciplinary proceedings." 418 U.S. at 570.

HELD: An Adjustment Committee made up of the associate warden custody as chairman, the correctional industries superintendent, and the receptions center director is not insufficiently impartial to satisfy the due process clause. 418 U.S. at 570, 571.

HELD: Due process requirements in prison disciplinary proceedings are not to be applied retroactively by requiring the expunging of prison records of improper disciplinary determinations. 418 U.S. at 573. (Nebraska State Prison)

1975

U.S. Appeals Court
ACCESS TO COURT
PRIVILEGED COMMUNICATION

Bryan v. Werner, 516 F.2d 233 (3rd Cir. 1975). An institution may not refuse to mail court directed letters. (State Correctional Institution, Dallas, Pennsylvania)

U.S. District Court
DUE PROCESS
LEGAL MATERIAL

Craig v. Hocker, 405 F.Supp 656 (D. Nev., 1975). Prisoners brought action against the warden and others challenging various aspects of prison administration and the discipline of prisoners. The district court held: (1) that prisoners who were subject to disciplinary proceedings were entitled to certain due process rights; (2) that the classification process could not be equated with disciplinary proceedings for the purposes of due process; (3) that prisoners were entitled to access to courts and to the availability of certain legal material; (4) that prisoners were not being denied medical care and treatment; (5) that certain aspects of punitive segregation cells constituted cruel and unusual punishment; (6) that statutes providing for prison confinement of mentally ill persons for security reasons were unconstitutional; and (7) that the prisoners were not entitled to damages. (Nevada State Prison)

U.S. District Court
ACCESS TO 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. District Court
ACCESS TO ATTORNEY

Mims v. Shapp, 399 F.Supp. 818 (W.D. Penn. 1975). Where a prisoner's actions in segregation constitute a danger even to his counsel, the prison administrators have a duty to prohibit counsel from seeing his client until the situation changes. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). Absent some alternative provision for legal assistance, indigent inmates must be provided access to a reasonably adequate law library, and the defendants must submit a plan of reasonable access either to lawyers or to a law library. Acceptable alternatives include a legal service program, access either to the county law library, or transfer of inmates to state prisons with adequate law libraries. (York County Prison, Pennsylvania)

U.S. District Court
PRIVILEGED COMMUNICATION

Sykes v. Kreiger, 451 F.Supp. 421 (N.D. Oh. 1975). Prisoner access to telephone is ordered. Indigent inmates must be allowed to send five free letters per week. No limitations are allowed on attorney-client mail. Inmates in isolation are entitled to correspond with attorney. (Cuyahoga County Jail, Ohio)

1976

U.S. Supreme Court
CLOTHING-COURT

Estelle v. Williams, 425 U.S. 501 (1976), reh'g. denied, 426 U.S. 954 (1974). Williams, unable to post bond, was held while awaiting trial on a charge of assault. When Williams learned he was to go on trial, he requested his civilian clothes. The request was denied, but no objection was made at trial. Williams was convicted of assault with intent to commit murder with malice, a decision upheld by the Texas Court of Appeals.

Williams then petitioned the U.S. District Court for a writ of habeas corpus on the ground that requiring him to stand trial in prison garb was unfair. While the district court agreed such practice was unfair, it denied relief on the ground that the error was harmless. The Fifth Circuit Court of Appeals reversed solely on the issue of harmless error. Defendant Estelle, Texas Corrections Director, sought certiorari from the U.S. Supreme Court. The decision was reversed.

HELD: "[A]lthough the state cannot, consistently with the fourteenth amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes, the failure to make an objection to the court as to being tried in such clothes, for whatever reasons, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." 425 U.S. at 512. (Harris County Jail, Texas)

U.S. District Court
LEGAL ASSISTANCE
LAW LIBRARY
ACCESS TO ATTORNEY

Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Lack of access to library or any law books contributes to denial of effective assistance of counsel, ability to assist in preparation of defense and to secure witnesses. Facilities for confidential attorney client conferences must be established. Restrictions on visiting contribute to denial of effective assistance of counsel, ability to assist in preparation of a defense and to secure witnesses. (Escambia County Jail, Pensacola, Florida)

U.S. Supreme Court
LEGAL ASSISTANCE
TRANSFER

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)

U.S. District Court
LAW LIBRARY
ACCESS TO ATTORNEY

Moore v. Janing, 427 F.Supp. 567 (D. Neb. 1976). Court declines to require purchase of law library where some access to legal materials is provided. Use of public hallway for attorney-client consultation contributes to finding of unconstitutionality. Private facilities must be provided. (Douglas County Jail, Nebraska)

U.S. District Court
LAW LIBRARY

Rodriguez v. Jiminez, 409 F.Supp. 582 (D. P.R. 1976). Absence of law library violates the sixth and fourteenth amendments. (San Juan District Jail)

U.S. District Court
LAW LIBRARY

Tate v. Kassulke, 409 F.Supp. 651 (W.D. Ky. 1976). Preliminary injunction regarding right to a law library is denied because of lack of legal authority in the circuit, divided authority elsewhere, and availability of lawyers under Gideon and Argersinger. (Jefferson County Jail, Kentucky)

U.S. Appeals Court
ACCESS TO COURT
ACCESS TO ATTORNEY

Taylor v. Sterrett, 532 F.2d 462 (5th Cir. 1976). While the right to effective counsel under the sixth amendment extends only to criminal matters, the right of access to the courts is available to pretrial detainees in order that they might contest the legality of their conviction, the constitutionality of prison conditions, or pursue any civil matters. (Dallas County Jail, Texas)

U.S. Supreme Court
INDIGENT INMATES

United States v. MacCollom, 426 U.S. 317 (1976). 28 U.S.C. Section 753 (F), which provides for a free transcript for indigent prisoners asserting a claim under 28 U.S.C. Section 2255 (federal habeas corpus), if the trial judge certifies that the asserted claim is not frivolous and that the transcript is needed to decide the issue, does not require that an indigent prisoner be supplied with a free transcript before he files a section 2255 motion.

1977

U.S. Supreme Court
42 U.S.C.A. Section 1983
LEGAL ASSISTANCE
LAW LIBRARY

Bounds v. Smith, 430 U.S. 817 (1977). In this 42 U.S.C. Section 1983 action, inmates incarcerated in the North Carolina correctional facilities allege they were denied access to the courts in violation of their fourteenth amendment rights by the state's failure to provide legal research facilities.

After an acceptable plan was developed by the state to provide library facilities, the U.S. District Court ruled that the state was not constitutionally required to provide legal assistance as well as libraries. The Fourth Circuit Court of Appeals affirmed all aspects of the district court's decision except for its finding that the state's plan did not provide equal access to the research facilities for women. From an order eliminating this discrimination the state sought review in the U.S. Supreme Court which was affirmed.

HELD: "[T]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." (emphasis added) 430 U.S. at 828. Commenting on available alternatives, officials may consider in providing access to the courts, the Court states: "This is not to say economic factors may not be considered, for example, in choosing the methods used to provide meaningful access. But the cost of protecting a constitutional right cannot justify its total denial." 430 U.S. at 825.

DICTA: "Among the alternatives [to assure meaningful access to the courts] are the training of inmates as paralegal assistants to work under a lawyer's supervision, the use of paraprofessionals and law students, either as volunteers or in formal clinical programs, the organization of volunteer attorneys through bar associations or other groups, the hiring of lawyers on a part-time consultant basis, and the use of full-time staff attorneys, working either in new prison legal assistance organizations or as part of public defender or legal services offices.... A legal access program need not include any particular element we have discussed, and we encourage local experimentation." 430 U.S. at 831-832.

While recognizing that a pro se pleading is subjected to less stringent standards of review, the Court stated, "We reject the state's claim that inmates are 'ill equipped to use the tools of the trade of the legal profession' making libraries useless in assuring meaningful access... This court's experience indicates that pro se petitioners are capable of using lawbooks to file cases raising claims that are serious and legitimate even if ultimately unsuccessful." 430 U.S. at 826, 827.

NOTE: The state's plan for research libraries was acceptable to the court, "except for the questionable omission of several treatises, Shepard's Citations, and local rules of court." 430 U.S. at 820.

The plan included the following lawbooks:

- State Statutes
- State Reports (1960 - present)
- State Court of Appeals Report
- Index to State Cases
- State Rules of Court
- United States Code Annotated:
  - Title 18
  - Title 28 2241 - 2254
  - Title 28 Rules of Appellate Procedure
  - Title 28 Rules of Civil Procedure
  - Title 42 1891- 2010
- Supreme Court Reporter (1960 - present)
- Federal 2d Reporter (1960 - present)
- Federal Supplement (1960 - present)
- Black's Law Dictionary
- Sokol: Federal Habeas Corpus
- La Fave's Scott: Criminal Law Hornbook (2 copies)
- Cohen: Legal Research
- Criminal Law Reporter
- Palmer: Constitutional Rights of Prisoners

(North Carolina State System)

U.S. Appeals Court
ACCESS TO ATTORNEY

McDonald v. State of Illinois, 557 F.2d 596 (7th Cir. 1977), cert denied, 434 U.S. 966 (1977). Refusal of jail authorities to permit plaintiff's lawyer to photograph plaintiff for purposes of his criminal defense violates the constitutionally protected right to prepare a defense and to present any helpful evidence to the courts. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
LAW LIBRARY
PRO SE LITIGATION

U.S. v. West, 557 F.2d 151 (8th Cir. 1977). Inmate representing himself in criminal case is not denied due process by failure to provide access to a law library when a standby lawyer is appointed and assists him on request, and where the inmate was given telephone access to witnesses. (Federal Prison, Arkansas)

U.S. District Court
42 U.S.C.A. Section 1983
LEGAL ASSISTANCE
LAW LIBRARY

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:

(1) 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;

(2) in view of an uncontroverted affidavit by a person allegedly depriving the plaintiff of his right to legal assistance in prison, the affidavit explaining that use of the prison law library was permitted on a first come, first served basis, the prisoner's allegation of denial of access to legal assistance failed to state a claim for relief; and

(3) questions of medical judgment are not subject to judicial review. A prisoner cannot be the ultimate judge of what medical treatment is necessary and appropriate for him. States, not federal courts are supervisors of state prisons. Federal court will intervene only to protect constitutional interests. Under Virginia law, prisoners have no liberty interest in remaining in a particular prison. (Virginia Department of Corrections)

1978

U.S. District Court
TRANSFER
ACCESS TO ATTORNEY

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
ACCESS TO ATTORNEY

O'Bryan v. Saginaw, 446 F.Supp. 436 (E.D. Mich. 1978). Telephone calls are to be allowed on admissions, return from court and at least ten minutes per week. Newly admitted inmates are to be given the opportunity to contact attorney, family, bondsmen and others on and after admission. Expanded visitation schedule is to include at least two visits per week; including children. Limited contact visitation is ordered. (Saginaw County Jail, Michigan)

1979

U.S. District Court
PRIVILEGED COMMUNICATION

Carwile v. Ray, 481 F.Supp. 33 (E.D. Wash. 1979). If opening of "judicial mail" actually occurred, it was in direct disobedience to the sheriff's orders and, therefore, the sheriff could not be liable. (County-City Jail, Spokane County, Washington)

State Supreme Court
ACCESS TO ATTORNEY

Case v. Andrews, 603 P.2d 623 (1979). The Kansas Supreme Court held that the policy of visually monitoring all consultations between attorneys and clients by Lyon County Jail officials is an unreasonable interference with the right to confidential attorney-client communications. The case arose when a prisoner and his counsel tried to obtain privacy by hanging a coat over a television camera lens in the room. Upon denial of the request, they instituted an action alleging violation of the inmate's sixth amendment right to effective representation by counsel. The court agreed and found that the jail officials had made no showing that the questioned practice furthered any substantial governmental interest in security, order or rehabilitation.

The confidentiality of communications between attorney and client were deemed necessary of protection by the court and, as such, the court held they should be afforded as much privacy as is reasonably possible under the circumstances. The court stated that attorneys are officers of the court and absent a showing to the contrary it must be presumed will strive to uphold the credibility and standards of the judicial system rather than subvert them. Finally the court said, "absent a showing of risk to the order or security of the jail, the practice of visually monitoring an inmate-lawyer conference when privacy is requested, is unreasonable." (Lyon County Jail, Kansas)

U.S. Appeals Court
ACCESS TO ATTORNEY
LAW LIBRARY

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 a pretrial detainee or a convicted felon or misdemeanant. The court then reviewed the history of corrections in the state of Mississippi and specifically in Jackson County. It noted that Jackson County officials had spent a considerable amount of money and instituted several new programs in the last ten years. In addition, at the time of this opinion, the county was in the process of erecting a new jail. After noting these facts, the court made rulings in several areas.

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 a 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.

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.

LAW LIBRARY. Prisoners were able to acquire books by asking a public defender or private attorney to obtain the book for them from the county law library. The court ruled that this was inadequate for convicted inmates who had exhausted their rights of direct appeal. However, the court ruled, the State of Mississippi, and not the County of Jackson, was the proper party to remedy the situation, and since the state had not been named as a defendant, the court refused to grant relief. The court stated, however, that its order would not preclude the inmates from taking an appropriate action against the State of Mississippi in the future. The availability of public defenders and the ability of prisoners to "page" books from the county law library provided adequate access to the courts for pretrial detainees. Where convicted prisoners were provided neither public defender assistance nor access to the law library, they were denied access to the courts and their claims for relief could be heard. (Jackson County Jail, Pascagoula, Mississippi)

U.S. District Court
TRANSFER
ACCESS TO ATTORNEY

Mayberry v. Somner, 480 F.Supp. 833 (E.D. Penn. 1979). The 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)

U.S. Appeals Court
LAW LIBRARY

McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979). Allegations of denial of access to a law library fail to state a claim upon which relief could be granted where the inmate has been able to pursue appeals despite the alleged denial of access. (Massachusetts Correctional Institute, Walpole, Massachusetts)

U.S. District Court
LAW LIBRARY
LAW BOOKS

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. However, the inmate must be able to receive books or copies of the books. Legible copies must arrive within forty-eight hours of request. If the individual is not considered violent or a danger to others, there is no reason to deny him a chair in his cell. 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)

1980

U.S. Appeals Court
LAW LIBRARY

Battle v. Anderson, 614 F.2d 251 (10th Cir. 1980). The provision of inmate clerks and an adequate law library does not, per se, provide adequate access to the courts. (State Penitentiary, McAlister, Oklahoma)

U.S. Appeals Court
LAW 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 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
LAW LIBRARY

Delgado v. Sheriff of Milwaukee Co. Jail, 487 F.Supp. 649 (E.D. Wisc. 1980). Allegations that a pretrial detainee is denied the use of an adequate law library states a claim in which relief could be granted. (Milwaukee County Jail, Wisconsin)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION
ACCESS TO 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. Appeals Court
PHOTOCOPYING
LAW LIBRARY

Harrell v. Keohane, 621 F.2d 1059 (10th Cir. 1980). Inmates are not entitled to free photocopying. Reasonable limitations on photocopying will be upheld. A delay in the provision of access to the institutional law library will not be the basis for a cause of action where the individual cannot demonstrate any prejudice. (Oklahoma State Prison)

U.S. District Court
JAIL HOUSE LAWYER

Henderson v. Ricketts, 499 F.Supp. 1066 (D. Colo. 1980). While jailhouse lawyers cannot be prevented from providing services, they can be prevented from charging fees. Therefore, the state could properly intercept and seize a check mailed by one inmate to another for legal services. (Canon Correctional Facility, Colorado)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Hutchings v. Corum, 501 F.Supp. 1276 (W.D. Mo. 1980). The court indicates that the absence of either counsel or law library for inmates of the local jail would violate their right of access to the courts. (Clay County Jail, Missouri)

U.S. District Court
ACCESS TO COURT

Intersimone v. Carlson, 512 F.Supp. 526 (M.D. Penn. 1980). An institutional prohibition on correspondence with the individual's trial jurors was valid and did not violate the right of access to the courts where it was required by a court order limiting such correspondence. The court notes that the limitation could easily violate the right of access to the courts in a different situation. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. Appeals Court
LAW LIBRARY
LEGAL ASSISTANCE

Kelsey v. State of Minnesota, 622 F.2d 956 (8th Cir. 1980). The failure of a prison to provide adequate law library facilities does not immediately trigger a denial of access to the courts, according to a recent decision of the United States Court of Appeals for the Eighth Circuit. While agreeing with the plaintiff that the prison library in question was woefully inadequate, the court held where the prison provided alternative sources of assistance, it could not be said that the inmates were being denied proper access to the courts in violation of the constitution. In this case the court found that sufficient alternative means of aid, such as the Legal Assistance of Minnesota Prisoners, was available. Hence, no violation of the prisoner's right of access to the court was found. (Stillwater State Prison, Minnesota)

U.S. Appeals Court
LAW LIBRARY

Leeds v. Watson, 630 F.2d 674 (9th Cir. 1980). Where a law library was not unquestionably accessible to the jail inmates and where counsel were not always willing to handle civil actions, the failure of the county to provide a law library in the county jail constituted a violation of the right of the inmates' access to the courts. (Kootenai County Jail, Idaho)

U.S. Appeals Court
IN FORMA PAUPERIS

McMath v. Alexander, 486 F.Supp. 156 (M.D. Tenn. 1980). The court recognizes that it has the power to appoint counsel for an inmate proceeding in forma pauperis, but here declines to do so because the pleadings are clearly drawn and the issues clearly stated. (Tennessee State Prison)

State Appeals Court
DUE PROCESS
ACCESS TO ATTORNEY
CIVIL SUIT

Merneigh v. Lane, 409 N.E.2d 319 (Ill. App. 1980). An Illinois appeals court has ruled that due process considerations apply in a prisoner's civil suit. Merneigh, a prisoner at the Menard, Illinois Correctional Center, successfully persuaded the Illinois Appellate Court that the trial court had erred in dismissing his civil suit against certain correctional officials. As a result, the Appellate Court reinstated the case. In an action filed in Randolph County Circuit Court, Merneigh complained that he was permitted only two weekly visits of one and one-quarter hours each to the Menard law library. Claiming that this amount of time was inadequate, Merneigh alleged that his right of access to the courts had been violated. The complaint, filed pro se by the inmate, was docketed but no summons was served. Later, a motion to dismiss was prepared and filed by the Randolph County state's attorney. The complaint was dismissed on the same day by the court, without notice and without a hearing. Merneigh appealed the dismissal, claiming a violation of due process.

The appellate court noted that although a prisoner has no right to be present in court for proceedings relating to a civil suit, consideration of due process does apply. The court stated that the inmate should have been given an opportunity to either file a written response to the motion to dismiss or to file an amended complaint. The appellate court thus reversed the dismissal and remanded the case. (Correctional Center, Menard, Illinois)

U.S. Appeals Court
ACCESS TO COURT

Preast v. Cox, 628 F.2d 292 (4th Cir. 1980). The refusal by officials at the Powhaton Correctional Center in State Farm, Virginia, to recognize an association of prisoners formed for the purpose of bringing lawsuits to challenge prison conditions, has been sustained by the United States Court of Appeals for the Fourth Circuit. The officials at Powhaton routinely allow prisoner associations and cooperate with inmates in planning meetings. However, all groups must apply to the prison administration for recognition and approval prior to receiving official sanction.

Although the group in question here, called the Renaissance Committee, had never applied for official approval, it argued that prison officials could not interfere with its activities absent a demonstrated threat to prison security. They also maintained that denial of meeting privileges was akin to a limiting of the right of access to the courts to which they were entitled. The court disagreed. Finding that the prison regulations were a reasonable and effective method of maintaining security within the institution, the court rejected the appeal. (Powhaton Correctional Center, Virginia)

U.S. District Court
SEARCHES
ACCESS TO ATTORNEY

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)

State Supreme Court
LAW LIBRARY
PRO SE LITIGATION
LEGAL ASSISTANCE

State v. Simon, 297 N.W.2d 206 (Iowa 1980). The Supreme Court of Iowa has noted that a criminal defendant, wishing to conduct his own defense, need not be allowed access to law library to do essential legal research. In so holding, the court affirmed the conviction of Roger Simon on charges of willful injury. After being arraigned on the criminal charges, Simon sought the leave of the court to discharge his attorney. His motion was granted and another attorney was appointed solely for the purpose of assisting Simon in his defense. Simon then sought court permission to use the Scott County Bar Association Library. Recognizing that legal research can be an essential component to an adequate defense and noting that the defendant was proceeding pro se, the trial court nevertheless disallowed the request, holding that Simon's access to legal materials, through his court appointed lawyer-assistant, was sufficient. Simon was convicted, and on appeal raised the issue of the adequacy of availability to research materials. The Supreme Court of Iowa acknowledged the necessity of research in conducting a legal defense and also admitted that Simon was acting as his own attorney. Nevertheless, the court affirmed the conviction, stating that access was available. Here, the court-appointed assistant was held a sufficient alternative and the conviction was therefore affirmed. (Scott County, Iowa)

U.S. Supreme Court
TRANSFER
DUE PROCESS
ACCESS TO COUNSEL

Vitek v. Jones, 100 S.Ct. 1254 (1980). Pursuant to a Nebraska statute allowing transfer to a mental institution when an inmate is found to be suffering from a mental illness or defect which cannot be treated at the correctional facility, Jones was to be transferred from the Nebraska State Prison to a State Mental Hospital. In this suit against state officials, Jones challenged the adequacy of the procedures by which the statute permits transfers, on a procedural due process basis. A three judge U.S. District Court declared the statute unconstitutional as violating the fourteenth amendment due process protections. The court permanently enjoined the state from transferring Jones, unless it adhered to certain procedures outlined by the Court.

The Supreme Court noted probable jurisdiction (434 U.S. 1060). Meanwhile, Jones had been paroled on condition that he accept psychiatric treatment at a VA Hospital. In light of this, the Supreme Court vacated the district court's judgment and remanded the case to that court for a determination on the question of mootness. (Vitek v. Jones, 436 U.S. 407 1978). Both Jones and the state agreed the case was not moot. The district court reinstated its original judgment and the case came back to the Supreme Court for a hearing on the merits. Jones, meanwhile was back in prison for violation of parole. (Affirmed.)

HELD: The district court correctly identified a liberty interest in the Nebraska statute, under which a prisoner could reasonably expect that he would not be transferred to a mental hospital without a finding that he was suffering from a mental illness for which he could not secure treatment in the correctional facility. Further, the district court correctly concluded that transferring Jones to a mental institution had "some stigmatizing" consequences, which together with the mandating behavior modification treatment Jones would be subjected to at the hospital, constituted a major change in the conditions of confinement amounting to a grave loss "that should not be imposed without the opportunity for notice and an adequate hearing." 100 S.Ct. at 1261.

HELD: The objective expectation, firmly fixed in state law and official correctional practice that a prisoner would not be transferred unless he suffered from a mental disease or defect that could not be adequately treated in the prison, gave Jones a liberty interest that entitled him to the benefits of appropriate procedures in connection with determining the conditions that warranted his transfer to a mental hospital. 100 S.Ct. at 1261.

HELD: "Nebraska's reliance on the opinion of a designated physician or psychologist for determining whether the conditions warranting a transfer exist neither removes the prisoner's interest from due process protection, nor answers the question of what process is due under the Constitution." 100 S.Ct. 1262.

HELD: "[A] convicted felon...is entitled to the benefit of procedures appropriate in the circumstances before he is found to have a mental disease and transferred to a mental hospital." 100 S.Ct. at 1263.

HELD: "[T]he stigmatizing consequences of a transfer to a mental hospital for involuntary psychiatric treatment coupled with the subjection of the prisoner to mandatory behavior modification as a treatment for mental illness constitute the kind of deprivations of liberty that require procedural protections." 100 S.Ct. at 1264.

HELD: "Because prisoners facing involuntary transfer to a mental hospital are threatened with immediate deprivation of liberty interests they are currently enjoying and because of the inherent risk of a mistaken transfer, the district court properly determined that procedures similar to those required by the court in Morrissey v. Brewer, 408 U.S. 471 (1972] were appropriate in the circumstances present here. 100 S.Ct. at 1265.

The district court held that to afford sufficient protection to the liberty identified, the following minimum procedures must be observed before transferring a prisoner to a mental hospital:

a. Written notice to the prisoner that a transfer to a mental hospital is being considered;

b. A hearing, sufficiently after the notice, to permit the prisoner to prepare, at which disclosure to the prisoner is made of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;

c. An opportunity at the hearing to present testimony of witnesses by the defense and to confront and cross-examine witnesses called by the state, except upon a finding, not arbitrarily made, of good cause for not permitting such presentation, confrontation or cross-examination;

d. An independent decision-maker;

e. A written statement by the factfinder 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
RIGHT TO COUNSEL
TRANSFER

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)

U.S. Supreme Court
RIGHT TO COUNSEL

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. 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.

U.S. District Court
PRO SE LITIGATION
JAIL HOUSE LAWYER

Fair v. Givan, 509 F.Supp. 1086 (N.D. Ind. 1981). A state prison inmate who has waived counsel and has been granted the right to proceed pro se, does not then have the absolute right to be represented in state court by a fellow inmate. (State Prison)

U.S. District Court
ACCESS TO 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
RIGHT TO COUNSEL

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

1982

U.S. Appeals Court
PRIVILEGED COMMUNICATION

Davidson v. Scully, 694 F.2d 50 (2d Cir. 1982). Inmates are allowed to send unopened mail to ACLU and Army legal offices. An inmate protested prison regulations which prohibited four of his sealed letters to be mailed. The U.S. District Court for the Southern District of New York dismissed the case, citing Oswald v. Sostre, 442 F.2d 178 (1971). The inmate had attempted to send mail to the Army legal offices and the ACLU. The inmate was informed that his mail could not be sent sealed since it was not legal mail, although he had marked it as legal mail. He was told that legal mail had to be addressed to an attorney; regulations also required for nonlegal mail that the individual first receive permission from the recipient to send the letter. The United States Court of Appeals, Second Circuit, reversed the lower court decision, finding the institutional practices constituted an interference with the right of access to the courts. The court noted that the fact that incoming mail from such sources can be opened and inspected for contraband does not imply that outgoing mail can be opened and inspected, and found no legitimate purpose served by such inspection. (Green Haven Correctional Facility, New York)

U.S. District Court
LAW LIBRARY
PRO SE LITIGATION

Falzerano v. Collier, 535 F.Supp. 800 (D.C. N.J. 1982). New Jersey met its constitutional duty of protecting the rights of prisoners for access to the courts by its system of public defenders and public advocates. New Jersey had no obligation to satisfy a prisoner's whim to represent himself and to provide him with a full law library for that purpose. (Essex County Jail, New Jersey)

U.S. Appeals Court
LEGAL MATERIALS

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

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

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

State Court
LAW LIBRARY
TRANSFER

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)

U.S. Appeals Court
PRO SE LITIGATION
ATTORNEY FEE

Williams v. Thomas, 692 F.2d 1032 (1982), cert. denied, 103 S.Ct. 3115 (1982). Appeals court finds lower court award of fees is inadequate. The U.S. Court of Appeals for the Fifth Circuit has ruled that a district court abused its discretion by awarding only $2,500 in counsel fees to a lawyer appointed to represent an indigent plaintiff in connection with injuries inflicted on him while he was incarcerated at the Dallas County Jail. The court held that when lawyers are assigned to represent pro se applicants and "undertake their responsibilities vigorously, set aside their more remunerative practices, and champion the rights of the indigent in an effective, selfiness, and self-sacrificing manner, the district court should not impede the policies behind Section 1988 by making an inadequate award of attorney's fees." While conceding that the plaintiff's monetary recovery was small ($500), the court noted that it is "difficult to place a monetary amount upon the benefit that the public receives when public officials are reminded that acts of unwarranted violence will not go unnoticed in the American system of justice." (Dallas County Jail, Dallas, Texas)

1983

U.S. District Court
LAW LIBRARY
LEGAL MATERIALS

Cepulonis v. Fair, 563 F.Supp. 659 (D. Mass. 1983). "Satellite" law library for inmates is ordered. MCI Walpole Prison was ordered by a federal district court in Massachusetts to establish a satellite law library. The satellite library will be used by Block Ten inmates. The library is to be available to the inmates fifty-six hours per week in installments of one, two, or three hours, as the inmate shall request and as may be practical. The library will contain: the United States Code Annotated; United States Reports; Federal Reporter; Federal Supplement; several Shepard's citations; local federal district rules and state court rules; and other Massachusetts law books. Inmates will be allowed to request from the main prison library materials unavailable in the satellite law library and/or xerox copies of those materials. In addition, they may keep a reasonable quantity of legal materials in their cells, subject to reasonable security precautions. Finally, institutional officials were initially ordered to make arrangements with a local law school for providing law students, working under the supervision of a member of the bar, to assist Block Ten inmates for at least five hours per week. On appeal, this provision was removed. (Massachusetts Correctional Institution, Walpole)

U.S. Appeals Court
ACCESS TO COURT

Holman v. Hilton, 712 F.2d 854 (3rd Cir. 1983) aff'd 542 F.Supp. 913 (D. N.J. 1982). Statute preventing lawsuits during confinement is held unconstitutional. The New Jersey state tort claims act prevents prisoners from filing suits against public entities

or employees until they are released from confinement. A prisoner serving a life sentence, who was seeking the return of personal property, filed suit. A federal district court found that the claims act was not constitutional, and on appeal, the Third Circuit Court of Appeals has affirmed the lower court's finding that the statute denied prisoners sentenced to life due process, and that the time delay contributed to governmental error in hearing the claims. The court also found that the state's administrative remedies available during confinement were not a valid alternative. (Trenton State Prison, New Jersey)

U.S. Appeals Court
LAW BOOKS
LEGAL ASSISTANCE

Holt v. Pitts, 702 F.2d 639 (6th Cir. 1983). Supplying legal counsel or law books provides access to courts. When, as a prisoner awaiting trial in a Tennessee county jail the sheriff denied him access to some personal law books, his first and fourteenth Amendment rights were infringed, a federal prisoner claimed when he brought a section 1983 suit. The court found that even though the inmate was denied access to his books, his constitutionally guaranteed right to access to the courts was not abridged because he had been afforded adequate legal counsel. The court found that a prisoner must be provided with either the legal tools necessary to defend himself, such as a law library, or the assistance of legally trained personnel. See Bounds v. Smith, 430 U.S. 817. (County Jail, Tennessee)

U.S. District Court
LAW LIBRARY

Inmates of Allegheny Co. Jail v. Wecht, 565 F.Supp. 1278 (W.D. Penn. 1983). Compliance with a three year old order to improve conditions is ordered. A federal court in Pennsylvania found that correctional officials had not completely complied with an order issued three years ago to correct poor conditions within the prison. While not citing the officials for contempt since they had attempted in good faith to comply with parts of the order, the court appointed a monitor to keep it advised of continued compliance. The major problems yet to be corrected were: inadequate access to the law library for female inmates, lack of facilities for recreation and exercise, and overcrowding. Although the intent to construct a new facility was announced, reduction of the jail population was ordered over the following months. (Allegheny County Jail, Pennsylvania)

U.S. Appeals Court
PHOTOCOPYING

Jones v. Franzen, 697 F.2d 801 (7th Cir. 1983). Photocopying policy for legal materials is upheld. On appeal, the court of appeals reversed the district court injunction, finding that the inmate had not demonstrated that the institutional policy on photocopying (limiting photocopying to legal material for the courts and requiring library staff to do all the copying) had affected his ability to gain access to the courts. (Pontiac State Prison, Illinois)

U.S. Appeals Court
CIVIL SUIT
ACCESS TO ATTORNEY

Merritt v. Faulkner, 697 F.2d 761 (7th Cir. 1983), cert. denied, 104 S.Ct. 434 (1983). Court lists guidelines for determining when access to a lawyer is necessary in civil litigation. Upon appeal, the court of appeals found that the trial court had abused its discretion in denying the plaintiff's request for appointed counsel and found no compelling or strong reasons for denying the prisoner's motion for a jury trial. Citing a 1981 decision, Maclin v. Freake, 650 F.2d 885 (1981), the court again listed five nonexclusive factors which the district court should consider in ruling on a request for appointed counsel for indigent civil litigants in the federal courts:

1. Whether the merits of the claim are colorable;
2. The ability of the indigent plaintiff to investigate the facts;
3. Whether the nature of the evidence indicates that the truth will more likely be exposed where both sides are represented by counsel;
4. The capability of the indigent plaintiff to present the case; and
5. The complexity of the legal issues raised by the complaint.

Using this test, the court found that counsel would have been appointed in this case. Also, the court criticized the lower court decision denying a jury trial because the request was not filed within the prescribed time frame, arguing that wide discretion is given to federal courts in considering untimely jury demands, and this case warranted such consideration. As a result, the case was remanded for a new trial, in which a jury and appointed counsel were to be provided. The plaintiff inmate sought relief for alleged deliberate indifference to his serious medical needs resulting in his blindness. (State Prison, Indiana)

U.S. District Court
PRO SE LITIGATION
ACCESS TO ATTORNEY
TRANSFER

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 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)

State Supreme Court
SEARCHES-
ATTORNEY

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)

State Court
LAW LIBRARY
LEGAL ASSISTANCE

State v. Staab, 430 So.2d 55 (La. 1983). Law library or legal assistance, but not both, provide access to court. Citing Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, the court held that the states must protect a prisoner's constitutional right of access to the courts by providing the prisoner either with a law library or with adequate assistance from persons trained in law. Because he received the assistance of counsel in presenting his appeal, the defendant was not additionally entitled to personal access to a law library, either for the purpose of assisting his counsel or for the purpose of preparing and presenting his own brief. (State System, Louisiana)

U.S. Appeals Court
PRO SE LITIGATION
LAW LIBRARY

U.S. Ex. Rel. George v. Lane, 718 F.2d 226 (7th Cir. 1983). An inmate who refuses legal assistance is not entitled to increased access to the law library. Relying on the Supreme Court case, Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491 (1977), the Seventh Judicial Circuit Court of Appeals has ruled that an inmate does not have an option to have legal assistance or to receive access to a legal library. The Bounds decision held that: "...the fundamental right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers with adequate law libraries or adequate assistance from persons trained in the law." 430 U.S. at 828 (emphasis added).

In a related case, People v. Heidelberg, an Illinois appeals court held that: "...by electing to represent himself, a prisoner in custody may not expect favored and privileged treatment even though the result may be that he is less effective as his own attorney."

The Seventh Circuit decision supported the People v. Heidelberg conclusion that when an inmate in custody "knowingly and voluntarily elects to manage his own defense, he relinquishes many of the traditional benefits associated with the right to counsel." (Du Page County, Illinois)

U.S. Appeals Court
LAW LIBRARY
PHOTOCOPYING

Wanninger v. Davenport, 697 F.2d 992 (11th Cir. 1983). Access to law library is sufficient; photocopies are not required. The court of appeals affirmed the lower court decision, finding that the inmate's access to an adequate law library without restrictions on the use of materials therein provided him with necessary access to legal materials to represent himself. Photocopies of legal precedents were not necessary. (Hillsborough County Jail, Florida)

1984

U.S. Appeals Court
RIGHT TO COUNSEL

O'Hagan v. Soto, 725 F.2d 878 (2d Cir. 1984). Uncertainty about when right to counsel attaches causes federal appeals court to grant qualified immunity. A law enforcement officer denied an arrestee a phone call during questioning at a police station, prompting a suit alleging denial of access to counsel.

Although the appeals court found that the right to counsel attached at the time the arrestee was taken to the station for questioning, the officer was granted qualified immunity because his conduct did not violate "clearly established law."

The court noted that conflicting court decisions clouded the question of when the right to counsel begins. (Haverstraw Police Department, New York)

1985

U.S. Appeals Court
INDIGENT INMATES
POSTAGE

Glick v. Lockhart, 769 F.2d 471 (8th Cir. 1985). The appeals court upholds prison policy of denying free postage for legal mail when a prisoner has funds for personal letters.

An Arkansas prison policy denies prisoners free postage for their legal mail when they are able to provide their own postage for personal correspondence. The policy was challenged by a prisoner when his letter to the courts was not given a free stamp because he had mailed a personal letter the same day with his own funds. After protesting the practice, the warden allowed postage to be provided because the prisoner did not have funds in his account, as long as personal mail was not sent at the same time.

The U.S. Court of Appeals for the Eighth Circuit decided that the prison policy was acceptable, falling within the "wide discretion" that administrators are allowed in determining the means of access to legal resources. The court noted that in this case, the four-day delay did not have an adverse effect on the prisoner's appeal. (State Prison, Arkansas)

State Court
DUE PROCESS
ACCESS TO COURT

Johnson v. Scott, 702 P.2d 56 (Okl. 1985). Dismissal for failure to appear in a small claims action wherein the plaintiff sought to regain possession of certain personal property left at a county jail after several court appearances was violative of the plaintiff's constitutional rights of due process and access to courts where the plaintiff was imprisoned at the time of the hearing on matter and was unable to appear to present his claim.

A trial court faced with a plaintiff who cannot appear and testify because he is imprisoned need not dismiss a small claims action for failure to appear but may order that the individual's testimony be taken by deposition upon written questions, by deposition taken by telephone, or by recording deposition by other than stenographic means. (State Penitentiary, Oklahoma)

U.S. Appeals Court
LEGAL ASSISTANCE
LAW LIBRARY

Lindquist v. Idaho State Bd. of Corrections, 776 F.2d 851 (9th Cir. 1985). Inmates appealed from an order of the United States District Court approving the prison's plan to improve its law library. The court of appeals held that: (1) the prison's plan was not constitutionally deficient because it did not provide inmates with the assistance of an attorney; (2) law book inventory met minimum constitutional standards; (3) evidence was sufficient to support the finding that there was a sufficient number of law clerks to assist disadvantaged inmates; (4) the prison provided inmates with reasonable access to the library; and (5) the decision not to issue a permanent injunction was not an abuse of discretion.

The law book inventory included in the prison's law library met minimum constitutional standards and provided inmates with sufficient access to legal research materials to prepare pre se pleadings, appeals, and other legal documents, although the inventory did not include Pacific Reporter 2d, Shepard's Citations, or earlier editions of Federal Supplement. The prison need not provide its inmates with a law library that results in the best possible access to the courts; rather, the prison must provide its inmates with a library that meets minimum constitutional standards. Evidence that there were seven inmate law clerks working in the prison law library who were undergoing an extensive program on methods of legal research and writing was sufficient to support findings that there was a sufficient number of law clerks to assist disadvantaged inmates, and that they had received training which met minimum constitutional requirements. (Idaho State Correctional Institution)

U.S. Appeals Court
LAW LIBRARY

Love v. Summit County, 776 F.2d 908 (10th Cir. 1985). A detainee was not denied access to courts when he had no access to a law library. The Tenth Circuit Court of Appeals found that although the plaintiff's seven months detention triggered the right to petition the courts, his continuing access to counsel provided sufficient access. In addition, the court noted that his attorney, while declining to represent him in his civil claim, provided referral to others and appropriate forms to pursue the claim. The court also noted that there was no evidence that the defendants did anything to impede the detainee from contacting the courts or attorneys. (Summit Co. Jail, Utah)

U.S. Appeals Court
LAW LIBRARY
LEGAL ASSISTANCE

Morrow v. Harwell, 768 F.2d 619 (5th Cir. 1985). Law library provisions are inadequate, and the visiting policies are questioned. Prisoners at the McLennan County Jail filed suit several years ago alleging constitutional violations. The county provides access to legal materials through a weekly bookmobile visit supplemented by assistance from two law students. The court of appeals found this method inadequate. The court concluded that visiting facilities were adequate, and that the county had no obligation to build hospitable or convenient visiting areas. It upheld the county practice of allotting one hour more of visiting to male prisoners than female prisoners because males comprised over ninety percent of the population. The court found visiting policies unconstitutional which prohibited weekend visiting and prevented visits by minors. (McLennan County Jail, Texas)

U.S. Supreme Court
TRANSFER

Pennsylvania Bur. of Correction v. U.S. Marshals, 106 S.Ct 355 (1985). U.S. Marshals cannot be ordered by federal court to transport state inmates to federal courts. A federal district court had directed state officials to bring five prisoners to the county jail nearest to the court house and had ordered the United States Marshals to bring

the prisoners from that jail to the court house to testify in a prisoner's civil rights action against county officials. The Marshals Service appealed the district court order, which was reversed in part by the U.S. Court of Appeals for the Third Circuit. On appeal, the U.S. Supreme Court held that: (1) although statutes require U.S. marshals to obey mandates of federal courts and to transport prisoners if so ordered, the authority to issue the writ must derive from an independent statutory source; (2) statutes do not authorize writ of habeas corpus ad testificandum to be directed to anyone other than the prisoner's custodian; and (3) the All Writs Act does not authorize courts to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate. (Pennsylvania Bureau of Corrections)

U.S. Appeals Court
APPOINTED ATTORNEY
CIVIL SUIT

Wahl v. McIver, 773 F.2d 1169 (1985). In this Section 1983 suit, an inmate was not entitled to appointed counsel. Appointment of counsel in a civil case is not a constitutional right. See **Mekdeci v. Merrell National Laboratories**, 711 F.2d 1510 (11th Cir. 1983). It is a privilege justified only in exceptional circumstances. See also **Lopez v. Reyes**, 692 F.2d 15 (5th Cir. 1982). The federal appeals court found the inmate in the instant case had access to essential facts and legal doctrines to proceed without appointed counsel. (Lee County Jail, Florida)

U.S. District Court
LEGAL ASSISTANCE
PHOTOCOPYING
ACCESS TO COUNSEL

Walters v. Thompson, 615 F.Supp. 330 (U.S.D.C. Ill. 1985). A federal district court in Illinois found the state's program for legal assistance to segregated inmates to be inadequate. Primarily, the inmates must rely totally on inmate clerks who have little or no legal experience, formalized training, or supervision by attorneys. The clerks are supervised and paid by the corrections department. It is alleged that the inmate clerks are pressured into limiting the number of claims filed against the prison. When the inmates request legal materials, the clerks cannot obtain the actual books, but must photocopy the material. To worsen the matter, inmates are entitled to only 300 pages of photocopied material a year. Access to the inmate clerks is occasional, telephonic access to outside counsel is limited or nonexistent, and there is no contact with any trained legal personnel. Although the court determined these aspects to be constitutionally deficient, it refused to grant a preliminary injunction on the claims at this point, since the record didn't reveal how all maximum security state institutions were denying inmates meaningful access to the courts. (Menard Correctional Center and the Joliet Correctional Center, Illinois)

1986

U.S. Appeals Court
JAIL HOUSE LAWYER
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. District Court
LAW LIBRARY
LEGAL MATERIAL

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
TRANSFER
ACCESS TO COURT
LEGAL ASSISTANCE

Blake v. Berman, 625 F.Supp. 1523 (D. Mass. 1986). A prisoner housed for the state in a federal system raises issues of access to courts.

The 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. Appeals Court
PRO SE LITIGATION

Camp v. Oliver, 798 F.2d 434 (11th Cir. 1986). The primary issue in this appeal was whether a Georgia inmate's untrue statements of poverty in obtaining pro se status created grounds for dismissal with or without prejudice. After he filed his complaint alleging deliberate indifference to medical needs and obtained permission to proceed in forma pauperis under 28 U.S.C. Section 1915, the court learned he had funds in his prison account sufficient to eliminate his status of poverty.

The appeals court ruled dismissal with prejudice was too harsh a penalty because there was no showing of bad faith on the part of the inmate. He attached a certification by the prison financial officer attesting to the amount he believed was in his account. The court believed that the inmate was not intentionally misrepresenting his financial condition, especially in light that he offered partial fee payment after learning of his funds. (North Unit at Hardwick, Georgia)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Canterino v. Wilson, 644 F.Supp. 738 (W.D. Ky. 1986). Female inmates brought action for relief concerning conditions of their confinement, disparate treatment of men and women incarcerated in state prisons, and denial of vocational training and educational opportunities. After the state was ordered to supply female prison law library facilities equivalent to those provided to male prisoners, increase the amount of nonprogram time the library was open, and provide the equivalent of a half time attorney to assist inmates in areas of demonstrated need, the state moved to alter or amend orders concerning the access to courts issue. The district court held that inmate legal assistance was necessary to provide equal opportunities to female inmates. Past unavailability of legal resources prevented females from gaining legal assistance experience comparable to that of male writ-writers. (Correctional Institution for Women, Kentucky)

U.S. Appeals Court
LEGAL ASSISTANCE

Carter v. Fair, 786 F.2d 433 (1st Cir. 1986). Inmates failed to present any substantive evidence that the lawyer assistance program in the county jail was inadequate in assisting inmates to gain access to the courts. The jail had no law library. Instead, the jail had an arrangement with the county bar advocates program through which one attorney was made available each Thursday, for three hours. The attorneys rotated monthly and were paid fifty dollars for each three-hour session. (Norfolk County Jail and House of Corrections, Massachusetts)

U.S. Appeals Court
LAW LIBRARY

Cookish v. Cunningham, 787 F.2d 1 (1st Cir. 1986). An inmate brought action alleging he had been denied proper medical care and access to the law library, and that the law library was inadequate. The United States District Court declined to appoint counsel to represent the inmate and entered judgment against him, and the inmate appealed. The court of appeals held that: (1) the court did not abuse its discretion in not appointing counsel for the inmate; (2) the court did not abuse its discretion in quashing certain trial subpoenas; and (3) there was no reason to disturb the judgment on the inmate's claims.

An indigent civil litigant must demonstrate exceptional circumstances in his or her case to justify appointment of counsel under 28 U.S.C.A. Section 1915(b).

The prison library which contained numerous volumes on prisoner's rights, civil rights, habeas corpus and legal research as well as appropriate reporters, encyclopedias, dictionaries and statute books was adequate.

The temporary restrictions on the inmate's access to the law library did not unconstitutionally restrict his access to courts. Access was restricted during the initial two-week quarantine period, absent an emergency situation, and the inmate failed to allege any specific harm which occurred as a result of a temporary restriction. (State Prison, New Hampshire)

U.S. Appeals Court
PRO SE LITIGATION
ACCESS TO COURT

Darring v. Kincheloe, 783 F.2d 874 (9th Cir. 1986). A state prisoner filed a pro se action for injunctive relief and damages against the state prison superintendent. The United States District Court entered summary judgment in favor of the superintendent, and the prisoner appealed. The court of appeals held that: (1) the prisoner's claim seeking to enjoin enforcement of an institutional order which allegedly violated his constitutional right to access to the courts was rendered moot by the prisoner's transfer to the correctional center; (2) the prisoner was not faced with a sufficient threat of punishment so as to have standing to challenge the institutional order; and (3) the prisoner lacked third-party standing to assert that the institutional order violated other inmates' constitutional right to meaningful access to the courts. (State Penitentiary, Washington)

U.S. District Court
FRIVOLOUS SUIT

Dominguez v. Figel, 626 F.Supp. 368 (N.D. Ind. 1986). A federal court finds an inmate filed a frivolous and inaccurate suit. It imposed a $1,500 penalty and required the inmate to pay $2,500 in attorney's fees for the defendants.

A jail inmate brought a civil rights action alleging violations of freedom of religion and cruel and unusual punishment in a five-day lockdown period which allegedly prevented him from exercising and violated his freedom of religion. The federal district court held that: (1) confinement in his cell for one Sunday was constitutionally justified, even if it had prevented the inmate from exercising religion; (2) confinement in jail for five days did not prevent the inmate from exercising; and (3) the inmate was required to pay reasonable attorney fees and costs, as well as other Rule 11 sanctions for bringing a frivolous action.

The federal judge ordered the inmate to pay a $1,500 penalty for filing a frivolous lawsuit against jail officials. The prisoner was also ordered to pay for the jail officials' attorney's fee. The court awarded $2,500 in attorney's fees for having to defend the meritless allegations. The inmate, not his attorney, was responsible for payment, ruled the court. The attorney was merely appointed after the inmate filed the pro se action knowing it was groundless.

The inmate was given religious counseling and exercised inside his cell when he claimed a denial of these privileges. He at first denied that he had been given a shower during his five-day lockdown for suspected drug trafficking but later admitted receiving one. His attorney was operating with information supplied by him.

Even if the inmate had been denied a religious ceremony for one Sunday and out-of-cell exercise, there would have been no violation, ruled the court. Ultimately, the inmate admitted that he preferred to exercise inside his cell. His initial confinement was found by the court to have been justified to protect the informant and to control the flow of drugs at the jail. (Allen County Jail, Indiana)

U.S. Appeals Court
TRANSFER
LEGAL ASSISTANCE
LAW LIBRARY
RETALIATION FOR LEGAL ACTION

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. Appeals Court
PRIVILEGED COMMUNICATION

Gaines v. Lane, 790 F.2d 1299 (7th Cir. 1986). An appeals court upholds limitations on free postage for prisoner legal mail and other mail practices.

In two separate cases, prisoners challenged Illinois Department of Corrections policies regarding prisoner mail. Both complaints were dismissed and were consolidated on appeal. The appeals court held that: (1) regulations governing nonprivileged mail were constitutionally valid (mail is censored, reproduced or withheld if it presents a threat to prison security); (2) regulations which allow incoming privileged mail to be opened to determine that nothing other than legal or official matter was enclosed was justifiable; (3) the first amendment requires only that media mail be treated like all other nonprivileged mail; and (4) regulations which limited the number of first class letters mailed at state expense to three per week for indigent prisoners were "a reasonable attempt to balance the right of prisoners to use the mails with prison budgetary considerations....it is indisputable that inmates must be provided at state expense with the basic material necessary to draft legal documents and with stamps to mail them...however, although prisoners have a right of access to courts, they do not have a right to unlimited free postage." (Illinois Department of Corrections)

U.S. Appeals Court
JAIL HOUSE LAWYER

Gometz v. Henman, 807 F.2d 113 (7th Cir. 1986). A jailhouse lawyer sued a warden after the warden prohibited communication between the jailhouse lawyer and a fellow inmate with whom he had previously conspired to bring about the death of a prison guard. The district court denied injunction, and the jailhouse lawyer appealed. The court of appeals held that the warden could prohibit such communication, in light of the previous conspiracy which led to the death of a prison guard. (United States Penitentiary in Atlanta, Georgia)

U.S. Appeals Court
PRIVILEGED COMMUNICATION
IN FORMA PAUPERIS

Jackson v. Procunier, 789 F.2d 307 (5th Cir. 1986). A prisoner's allegations that he was deprived of his constitutional right of access to the courts when his petition in forma pauperis was intentionally delayed by prison mailroom personnel stated a cause of action under Section 1983. The delay resulted in the dismissal of his state appeal from an adverse judgment in a civil suit. The prisoner alleged that mail officers

deliberately held up his mail, that in violation of prison policy he was denied the opportunity to calculate the proper postage needed, and that there was a long history of deliberate and malicious indifference in the handling of inmate legal mail. (Department of Corrections, Texas)

U.S. District Court
ACCESS TO COUNSEL
PRIVILEGED COMMUNICATION

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; and (3) the telephone schedule, permitting the inmate to place a collect call to his attorney at least three times per week between the hours of 8:00 a.m. and 4:00 p.m. did not deny the inmate adequate access to counsel and the courts. (Intensive Management Unit, State Prison, Washington)

U.S. Appeals Court
LEGAL ASSISTANCE
PRIVILEGED COMMUNICATION

Little v. Norris, 787 F.2d 1241 (8th Cir. 1986). An inmate of a maximum security unit brought civil rights complaints challenging the constitutionality of prison policies which restricted his mail privileges, his right to attend group religious services and his right to receive legal assistance from another inmate. The United States District Court entered summary judgment dismissing the complaints, and the inmate appealed. The court of appeals held that forbidding the inmate in administrative segregation or punitive housing to receive assistance from another inmate in preparation of a legal draft did not violate the inmate's constitutional rights.

The fact that while the inmate was in punitive isolation, the inmate was denied the right to receive or send personal correspondence but was entitled to receive legal and media mail, did not deny the inmate constitutional rights. Where the purpose of withholding personal mail was to make punitive isolation unpleasant, and thereby discourage improper behavior and promote security within the prison, and such sanction was only imposed for thirty days. (Tucker Maximum Security Unit, Arkansas Department of Corrections)

State Appeals Court
ACCESS TO COURT

McCuiston v. Wanicka, 483 So.2d 489 (Fla. App. 2 Dist. 1986). A Florida appellate court again found unconstitutional a civil death statute that suspends the civil rights of convicted felons and bars prisoner's suits. The statute, which has been described by other courts as "an archaic remnant" is an unconstitutional denial of the right of access to courts guaranteed by the federal and state constitutions. It therefore overturned a lower court's decision and reinstated the inmate's suit against a sheriff alleging that, as a pretrial detainee, he was assaulted by a fellow inmate due to the sheriff's negligence in protecting him. (Lee County Jail, Florida)

U.S. District Court
ACCESS TO COURT
LEGAL ASSISTANCE
LAW LIBRARY

Morrow v. Harwell, 640 F.Supp. 225 (W.D.Tex. 1986). The county was not required to provide perfect access to courts for every prisoner in the county jail but was required to provide reasonable access to courts. By having its paralegals certified to give legal advice and by continuing its bookmobile program, the county was providing more than reasonable access for the less than one inmate per month having a legitimate need. The court held that the right of access to courts was not available with respect to the prisoners in the county jail who had no credible need for access for constitutional deprivations and desired only to double check their court-appointed attorneys.

The fact that the average population of the county jail had increased from about 160 in 1982 to almost 300 in 1986 was not a basis for establishing a denial of right of access to courts. Uncontroverted evidence was that eighty-two percent of detainees were in jail for fifteen days or less and that, in an approximate six-month time span, available paralegals had perhaps six and two, respectively, presentations of questions concerning legitimate civil rights complaints or habeas corpus applications. (McLennan County Jail, Texas)

U.S. District Court
ACCESS TO COURT

Powell v. Department of Corrections, State of Okl., 647 F.Supp. 968 (N.D. Okl. 1986). A state prisoner who had tested positive for the AIDS virus brought a Section 1983 action against the Oklahoma Department of Corrections alleging violation of his constitutional rights in his segregation from the general prison population. The prisoner also sought writ of mandamus raising similar issues. The district court held that: (1) conditions of the prisoner's confinement were not violative of his constitutional rights; (2) the prisoner was not denied his right to worship; (3) the prisoner was not denied equal protection of law; and (4) the prisoner was not denied his constitutional right of access to courts.

A prisoner does not have a federal constitutional right to be placed in the general prison population. The conditions of a prisoner's confinement after he tested positive for the AIDS virus, in which the prisoner was segregated from the general prison population but provided limited access to all prison programs and services and allowed to exercise, were not violative of the prisoner's constitutional rights. (Department of Corrections, Oklahoma)

U.S. Appeals Court
ACCESS TO COURT

Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986). The district court's injunction, preventing a prisoner from filing any case with the district court unless submitted by an attorney admitted to practice before the court, was invalid as overbroad. Although the prisoner had filed 176 cases within the past three years, and although some injunctive restrictions were clearly authorized, the district court's injunction could operate as an absolute bar against the filing of any suit, because the attorneys might be reluctant or unable to represent the prisoner due to the considerable number of prior suits. (Jacksonville, Florida)

U.S. District Court
RIGHT TO COUNSEL

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)

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U.S. District Court
PRIVILEGED COMMUNICATION

Averhart v. Shuler, 652 F.Supp. 1504 (N.D. Ind. 1987), cert. denied, 108 S.Ct. 1045. An Indiana inmate brought action against prison officials concerning their handling of the inmate's mail. The district court held that the inmate failed to show that prison authorities' opening of his legal mail out of the presence of the inmate was more than negligent, or that any prison officials read, copied or censored any of his legal mail. Thus, in the absence of evidence that prison officials acted with deliberate indifference toward the treatment of the inmate's mail, the inmate's claim did not rise to a level of due process violation.

The court also found that the prison officials' delay in mailing letters written by the inmate to his attorneys due to a legitimate contraband search, the requirement of a remittance slip and postage requirements did not harm the inmate and did not deprive the inmate of his substantive right to correspond as secured by the first and fourteenth amendments. (Indiana State Prison)

U.S. District Court
ACCESS TO COUNSEL

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 restraining control unit inmates during legal visits did not violate their right of access to the courts. (Marion Penitentiary, Illinois)

U.S. Appeals Court
ACCESS TO ATTORNEY

Baker v. Piggott, 833 F.2d 1539 (11th Cir. 1987), cert. denied, 108 S.Ct. 2918. Money was found in the possession of an inmate upon his transfer to another correctional facility. The inmate claimed he had planned to use the money to pay an attorney. There were, however, other means of securing counsel and it was found that he was not deprived of access to the courts, even if he was unable to retain a private attorney after the money was confiscated. Cert den. in 108 S.Ct. 2918. (Union Correctional Institution, Florida)

U.S. Appeals Court
LEGAL ASSISTANCE
LAW LIBRARY

Bee v. Utah State Prison, 823 F.2d 397 (10th Cir. 1987). According to a federal appeals court, prison officials need only provide inmates with assistance in preparing and filing lawsuits--not with access to a law library. Utah State Prison contracted with a private law firm to provide access to courts for inmates, rather than providing inmates with a law library. Although the attorneys did not provide representation after an initial lawsuit was filed, the law firm provided legal counseling to inmates and assisted them in preparing and filing civil pleadings. An illiterate inmate filed a suit claiming that this approach did not provide adequate access to the courts for illiterate inmates, but the appeals court disagreed holding that access to the court requires only that incarcerated inmates be given assistance which allows them to get into court. The court ruled that the Utah State Prison System allowed both literate and illiterate inmates to go forward on an equal footing--and that after getting into court, illiterate inmates, like illiterate non-inmates, could request the court to appoint an attorney to assist them further. According to the court, the prison system's legal obligation to provide access to the courts ended once the inmate entered the courthouse door. (Utah State Prison)

U.S. Appeals Court
INDIGENT INMATES

Boring v. Kozakiewiez, 833 F.2d 468 (3rd Cir. 1987), cert. denied, 108 S.Ct. 1298. Three inmates of the Pittsburgh, Pennsylvania jail filed suit against jail officials alleging inadequate medical care as follows: (1) denial of elective surgery for Ulnar nerve injury and pre-existing knee injury; (2) denial of special shampoo for a scalp condition; (3) denial of special diet to control migraine headaches; and (4) use of temporary rather than permanent fillings in teeth. The federal appeals court ruled that expert testimony is usually necessary for inmates to prove their claims of inadequate medical care.

According to the court, it was necessary for the inmates to show that these acts and omissions were sufficiently harmful to show deliberate indifference to serious medical needs, in order to prevail on their claims. The court suggested that while there are some situations in which the seriousness of injury or illness would be readily apparent to the lay person and no expert testimony would be required, those circumstances were not present in this case. As laymen, the jury would not be in the position to decide whether any of the conditions described by the inmates could be classified as "serious," said the court. In such circumstances, expert medical opinion is required. The prisoners argued in return that they were indigent and, if expert medical witnesses were required, their fee should be paid by the court. But, the court found that it had no power to pay such fees. Additionally, "the plaintiff's dilemma of being unable to proceed in this damage suit because of inability to pay for expert witnesses does not differ from that of non-prisoner claimants who face similar problems," the court said. "By seeking government funding in this case, plaintiffs are in effect asking for better treatment than their fellow citizens who have not been incarcerated but who had at least equal claims for damages," the court concluded. (Allegheny County Jail)

U.S. Appeals Court
INDIGENT INMATES

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 prisoner was not denied his right of access to the courts, even though the court did not act to provide counsel or to check into prison policies that were alleged to be impeding his access to legal materials.
(Fort Pillow State Prison)

U.S. District Court
LAW BOOKS

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 an amended complaint with regard to the challenge to his initial transfer and other claims. (Arizona State Prison)

U.S. Appeals Court
ACCESS TO
COUNSEL

Cupit v. Jones, 835 F.2d 83 (5th Cir. 1987). A pretrial detainee, who allegedly had a heart attack approximately three months prior to detention brought a 1983 civil rights action against parish prison officials. The federal district court granted summary judgment dismissing the action with prejudice. The pretrial detainee appealed. The appeals court ruled that the detainee was not entitled to a stress-free atmosphere while incarcerated. The court held that: (1) the pretrial detainee failed to establish that he had been denied reasonable medical care; (2) the magistrate did not abuse discretion by refusing to appoint counsel to assist the pretrial detainee; (3) the magistrate did not abuse discretion by refusing to subpoena witnesses; and (4) the magistrate did not abuse discretion by denying requests for production of jail documents. According to the court, pretrial detainees are entitled to reasonable medical care unless failure to supply that care is reasonably related to a legitimate governmental objective. Furthermore, pretrial detainees are entitled to protection from adverse conditions of confinement created by prison officials for a punitive purpose or with punitive intent. (Richmond Parish Jail)

U.S. Appeals Court
LEGAL MATERIALS

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. Appeals Court
LAW LIBRARY
RETALIATION

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
RETALIATION FOR LEGAL ACTION

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 Corr. Facility, NY)

U.S. District Court
FRIVOLOUS SUITS

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

U.S. District Court
SEARCHES

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. District Court
PRO SE LITIGATION
LEGAL MATERIAL

Hilliard v. Scully, 667 F.Supp. 96 (S.D.N.Y. 1987). After a filing of a federal civil rights claim by an inmate the court, following a bench trial, had dismissed his complaint as lacking merit. Because a notice of appeal which was filed with the court within thirty days as required by the Federal Rules of Appellate Procedure, but was not filed on 8-1/2 by 11 inch paper, as required by local court rules, the notice was rejected by the court clerk. The inmate claimed that due to the conditions of his incarceration he was unable to obtain the proper sized paper during the thirty day period. The court ruled that the pro se plaintiff should not forfeit his right to appeal simply because he did not file his notice of appeal on the proper size paper, because Federal Rule of Appellate Procedure 3(c) provides that an appeal shall not be dismissed for "informality of form or title of the notice of appeal." (New York State Prison)

U.S. District Court
LAW LIBRARY
LAW BOOKS
PRIVILEGED COMMUNICATION

Knop v. Johnson, 667 F.Supp. 467 (W.D. Mich. 1987). A federal district court ruled that a corrections department's legal mail policy violated inmates' constitutional right to be present when prison officials opened their legal mail. The court found that it was not a violation of the inmates rights to require prisoners to request privileged status for their legal mail, but the way in which the policy was implemented did unconstitutionally infringe upon the inmates' right to be present when such mail was opened. Not only were differences in the way in which different facilities implemented the policy not adequately explained to inmates, but the inmates were also required to renew their request for confidential treatment of their legal mail upon transfer to a new institution. The court also ruled that the state's prison law library system denied prisoners' a constitutional right of access to courts where the main law library collections were inadequate, and prisons failed to conduct regular and effective inventories of their law library collections. No research and explanatory assistance was provided to inmates using main law libraries, and inmates who did not have direct access to main law libraries were not provided with either direct access to legal assistance or direct access to

adequate law libraries. (State Prison of Southern Michigan, Michigan Reformatory, Riverside Correctional Facility, Marquette Branch Prison)

U.S. District Court
LAW LIBRARY
TRANSFER

Luce v. Magnusson, 675 F.Supp. 681 (D.Me. 1987). A federal court ruled that summary judgment was precluded on a claim by a Maine state prisoner incarcerated in a federal penal institution in Indiana that he was denied his constitutional right of access to the courts. The prisoner alleged that he intended to file a motion for postconviction review in a Maine court, but there were no resources on Maine law in the library at the federal prison, and he was without counsel. The court noted that the burden was on prison authorities to prove that legal services offered to the prisoner were adequate for his needs. (Maine Department of Corrections)

U.S. Appeals Court
FILING FEES

Lumbert v. Illinois Dept. of Corrections, 827 F.2d 257 (7th Cir. 1987). A federal appeals court ruled that reasonable costs can be imposed on those who want to sue, noting that it is proper that prisoners be made to think twice, by monetary exactions well within their ability, limited as it is, to pay, about bringing lawsuits that have no significant prospect of obtaining any worthwhile relief. The inmate had appealed a dismissal of his federal civil rights lawsuit that was due to his failure to pay a $7.20 filing fee assessed by the courts under a local rule. (Illinois Department of Corrections)

U.S. Appeals Court
LAW LIBRARY

Magee v. Waters, 810 F.2d 451 (4th Cir. 1987). According to a federal appeals court, an inmate was not denied a constitutional right of access to court despite claims that he was allowed only one hour a week in the jail library to do research and that the only lawbooks in the jail were volumes of the state statutes of which "some" were missing. The court noted that the missing volumes were not the ones which the inmate wanted and that he did not show any actual injury from the inadequacies or any specific problem which he wished to research. Further, the inmate was a temporary occupant of the jail and was only awaiting transfer. The court cited **Williams v. Leeke**, 584 F.2d 1336 (4th Cir. 1987) which held that three 45-minute intervals per week for research was insufficient for a prisoner who is facing "a substantial sentence of confinement." The appeals court ruled in this case that a prisoner housed only temporarily in a local jail can maintain such a suit absent a showing of specific harm or actual injury. (Portsmouth City Jail)

U.S. Appeals Court
LEGAL MATERIAL

Morello v. James, 810 F.2d 344 (2nd Cir. 1987). A federal appeals court ruled that the U.S. Supreme Court's 1981 decision in **Parratt v. Taylor**, 101 S.Ct. 1908, that bars federal civil rights suits for the deprivation of inmate property when state law provides a remedy, was not applicable to a suit in which legal materials were the subject of an alleged theft. The court explained that legal materials were constitutionally protected as providing access to court, and federal law could be invoked. Although the court did not rule on the merits of the claim, it did rule that the claim stated a cause of action under federal law for a constitutional violation and was not limited to state law remedies as were claims for deprivations of other kinds of property, reversing the district court's ruling. (Collins Correctional Facility)

U.S. Appeals Court
LAW LIBRARY

Oltarzewski v. Ruggiero, 830 F.2d 136 (9th Cir. 1987). Although prison officials may not obstruct a prisoner's access to the courts by unreasonably blocking his access to a law library, prison officials may place reasonable limitations on library access in the interest of the secure and orderly operation of the institution. The court found that a prisoner failed to contradict the facts set forth in a supervisor's affidavit. The supervisor stated that the prisoner was not denied the right to file a lawsuit, nor was he denied the use of a law library or threatened or harassed in any way. (Southern Arizona Corrections Release Center)

State Appeals Court
LEGAL MATERIAL

Rochon v. Maggio, 517 So.2d 213 (La. App. 1 Cir. 1987). An inmate alleged that prison officials violated his constitutional right of access to court when they opened an envelope the prisoner had in his possession during a shakedown search. The prisoner had attempted to walk out of his cell with the envelope after being told not to bring anything with him, contending that the letter was "legal mail." The court found that the inspection of the envelope, even though no contraband was found, was justified by suspicious actions of the prisoner. (Angola State Penitentiary, Louisiana)

U.S. Appeals Court
ACCESS TO COUNSEL
LAW LIBRARY
LEGAL ASSISTANCE

Straub v. Monge, 815 F.2d 1467 (11th Cir. 1987), cert. denied, 108 S.Ct. 336. A prison inmate brought a civil rights action alleging that county officials had violated his constitutional right to access to court. The federal appeals court held that even if a state prison inmate was not indigent, and had adequate financial resources with which to employ counsel of his own choice, the state was under constitutional obligation to assist the inmate in the preparation and filing of meaningful legal papers by providing adequate libraries or adequate assistance from persons trained in law. (Sarasota County Jail)

U.S. District Court
LEGAL MATERIAL

Thornley v. Edwards, 671 F.Supp. 339 (M.D. Pa. 1987). An inmate stated a colorable violation of his sixth amendment right of free access to the courts by alleging that prison officials opened his legal mail outside his presence. Regulations of the Bureau of Prisons requiring a "special mail" marking inscribed on the front of an envelope for correspondence to be subject to the requirement that it be opened in the inmate's presence affronted the Sixth Amendment, according to a federal district court. A prisoner's constitutional right of free access to courts is meaningful only if it provides them reasonable assurance that their legal mail will not be opened and read before it reaches them. (U.S. Penitentiary, Lewisburg, Pennsylvania)

U.S. Appeals Court
ACCESS TO COURT
TRANSFER

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)

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U.S. Appeals Court
FRIVOLOUS
SUITS
TYPEWRITER
VIDEO
COMMUNICATION

American Inmate Paralegal Assoc. v. Cline, 859 F.2d 59 (8th Cir. 1988). A pro se complaint, approximately 90 pages long, was filed by the American Inmate Paralegal Association, Inc. and some of its members confined in a state prison. They alleged that various prison officials conspired to retaliate against and harass them for their activities as "jailhouse lawyers," provided them inadequate space or personnel for their litigation activities, and generally obstructed their rights in connection with litigation against the prison. The prisoners were informed by a federal magistrate that they needed to file an amended complaint to present their grievances more concisely and clearly, which they were given twenty days to do. They were later granted an additional ten days. Subsequently, prison officials removed an electric typewriter from the cell of a prisoner who was not a party to the suit. The prisoners wrote the court stating that the amended complaint had been prepared, but that it was supposed to by typed on the electric typewriter and that they refused to file it because of the typewriter incident. The court granted them further time, but the prisoners continued to state that they would not file the amended complaint until officials returned the inmate's typewriter. The court noted that prison regulations allowed manual, but not electric, typewriters to be kept in prisoners' cells. Further, there is no constitutional right of access to a typewriter, and the inmates could have submitted a handwritten amended complaint. Additionally, the court noted that all of the correspondence, complaints and exceptions "concerning the confiscated typewriter are typed." The record in the case included numerous "abusive letters" about the magistrate and district court judge. "Even if there was any merit" to the prisoners' complaints, "the voluminous amount of frivolous documents submitted" supports dismissal with prejudice as frivolous. The court also found that the prisoners had no right to attend a pretrial conference and that the use of a two-way audio-video connection was adequate. (Missouri State Penitentiary)

U.S. Appeals Court
LEGAL
ASSISTANCE
LAW LIBRARY

DeMallory v. Cullen, 855 F.2d 442 (7th Cir. 1988). An inmate brought an action against government and prison officials for cruel and unusual punishment and unconstitutional restriction of access to courts; the appeals court reversed in part and remanded for further proceedings. Genuine issues of material fact, relating to less restrictive measures, precluded summary judgment for prison officials, in access-to-courts action brought by an inmate who was not allowed to go to the prison library, to confer personally with inmate paralegals, or to participate in legal training and services offered through the prison paralegal program; the inmate was allowed to check out books from the legal library by written request, to consult paralegals by correspondence, and to seek legal assistance through public defenders, court-appointed counsel, private attorneys, or a state legal assistance program. Prison officials bear an affirmative duty to provide inmates with reasonable access to courts and counsel and also to bear the burden of proving adequacy of means they provide. The dependence on untrained inmate paralegals as an alternative to library access does not provide inmates with constitutionally sufficient access to the courts. Generalized security concerns are insufficient to support a ban limiting the inmate's access to legal assistance. Instead, prison officials must come forward with evidence that the specific contact at issue threatens security and they must show that less restrictive measures are not possible. (Waupun Correctional Institute, Wisconsin)

U.S. Appeals Court
PRO SE LITIGATION
FRIVOLOUS SUITS

Gabel v. Lynaugh, 835 F.2d 124 (5th Cir. 1988). A trial court's dismissal of two prisoners' lawsuits as frivolous was upheld by the federal appeals court. In addition, the prisoners attempt to add matters to the appeal that had not even been raised at the trial court was found improper. The court ordered each inmate to reimburse the prison official defendants $10 in court costs, stating that the federal appeals courts do not exist in order to allow state prisoners to pursue frivolous or malicious appeals. The court noted that "about one appeal in every six" which came to its docket in the last four months was a state prisoner's pro se civil rights case and a "high percentage of these are meritless and many are transparently frivolous." The court "suggest that pro se civil rights litigation has become a recreational activity for state prisoners and give notice that future frivolous or malicious appeals will call forth like sanctions." (Texas Department of Corrections)

U.S. Appeals Court
JAILHOUSE LAWYERS
LEGAL ASSISTANCE
TRANSFER

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. Appeals Court
FRIVOLOUS SUITS

George v. King, 837 F.2d 705 (5th Cir. 1988). An inmate who awoke one morning with stomach cramps, diarrhea and nausea was helped to the infirmary after he had collapsed. The inmate was given medication by a doctor who told him to take the day off and stay in bed. Claiming that three to four hundred other inmates suffered the same symptoms on the same day, the inmate stated that he endured "great mental and physical pain for several days" because of "the food poisoning." The lawsuit, claiming only a single incident of food poisoning, which caused no permanent injury or serious medical complications was dismissed by the district court as "frivolous." This decision was upheld by the appeals court. The court ruled that, if prisoners "regularly and frequently" suffered from food poisoning with "truly serious medical complications as a result of particular, known unsanitary practices" and the authorities "without arguable justification refuse to attempt remedial measures," a constitutional violation might be shown, but no matter how many prisoners are affected, a single incident of food poisoning is no constitutional violation. (Dixon Correctional Institute)

U.S. Appeals Court
ACCESS TO COUNSEL
RIGHT TO COUNSEL

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. Appeals Court
PHOTOCOPYING
INDIGENT INMATE

Gittens v. Sullivan, 848 F.2d 389 (2nd Cir. 1988). Disagreeing with an inmate who alleged that the state's policy of denying prisoners free access to photocopy machines and unlimited free mailings deprived him of his constitutional right of meaningful access to the courts, the appeals court upheld a federal district court decision. Records indicated that the inmate was provided by the state with $1.10 per week for stamps and was also provided with an additional advance of at least $36 for postage for legal mail. According to the appeals court, the defendants have provided the plaintiff with adequate meaningful access to the courts, as shown by the number of lawsuits the inmate has filed as well as the abundance of papers submitted by the plaintiff in the instant suit. (Sing Sing Correctional Facility, New York State Department of Corrections Services)

U.S. District Court
INDIGENT INMATES
LEGAL ASSISTANCE
LAW LIBRARY

Gluth v. Kangas, 773 F.Supp. 1309 (D. Ariz. 1988), affirmed, 951 F.2d 1504. A prisoner in an Arizona Department of Corrections facility brought suit alleging prisoners were not granted constitutionally adequate access to courts, specifically challenging a prison law library access policy. The district court, in a series of orders, found that the prisoners who were denied physical access to the prison law library were entitled to receive assistance from a person trained in the law, to ensure meaningful access to courts, and accordingly, the prison policy under which no training was provided to prisoners denominated "legal assistants" and inmates

who appeared minimally capable of assisting other inmates with legal research and writing were approved as legal assistants was not constitutionally adequate. A new policy for access to the prison law library, providing that prisoners were to be granted reasonable physical access to an adequate law library and that prisoners were to be provided physical access to the law library during assigned law library hours, failed to provide sufficiently detailed guidelines to thwart arbitrariness and ensure that prisoners would enjoy adequate law library access to support their constitutional right to meaningful access to courts, and the new policy was accordingly not constitutionally sufficient. Another policy under which prisoners who were indigent were to be provided with necessary supplies to prosecute legal claims free of charge to the extent that the cost of those supplies exceeded the amount in the prisoner's account was not sufficient to support the prisoners' constitutional right to meaningful access to courts, where the indigency policy was shown by the prisoner's memorandum, affidavits, and exhibits to force the prisoners to choose between purchasing essential hygienic supplies and essential legal supplies and that "choice" was unacceptable. The court also set forth practices and procedures designed to assure prisoners their constitutional right to meaningful access to courts. These included requirements for law library access, law library prisoner law clerks to assist prisoners, a legal assistant program including training of legal assistants and publication of their names, and legal services and supplies. (Central Unit, Arizona State Prison, Florence, Arizona)

U.S. Appeals Court
FRIVOLOUS SUITS
JAIL HOUSE LAWYERS

In Re Tyler, 839 F.2d 1290 (8th Cir. 1988). A federal appeals court upheld a federal district court order restricting an inmate to filing one federal lawsuit a month and also prohibiting him from filing lawsuits for other inmate. **In Re Tyler**, 677 F.Supp. 1410 (D. Neb. 1987). (Nebraska State Penitentiary)

U.S. District Court
FRIVOLOUS SUITS

Jackson v. Lane, 688 F.Supp. 1291 (N.D. Ill. 1988). An inmate sought $100,000 in compensatory damages and $500,000 in punitive damages (the latter figure being sought from each named defendant) from correctional officials, correctional employees and a prison dentist. His request to have his teeth cleaned by a dental hygienist was responded to, by the prison dentist, by stating that there was no longer a hygienist on the staff. The court denied the inmate's request to file, without payment of the filing fee, a self-prepared nine-page typed complaint because the complaint was legally frivolous. The court found that the prisoner's complaint does not state an eighth amendment claim because denial of a dental hygienist does not rise to the level of deliberate indifference to serious medical needs of prisoners. (Illinois State Prison)

U.S. District Court
FRIVOLOUS SUITS

Jackson v. Wharton, 687 F.Supp. 595 (M.D. Ga. 1988). An inmate brought a civil rights action against prison officials, alleging that officials had failed to provide him with dentures. The federal district court dismissed the complaint as frivolous because the inmate had been provided with dentures after filing the complaint, and he could not establish a "serious" nature of his medical needs because he admitted that he removed his dentures to eat as it is easier for him to chew without them. The court noted that the dentures are basically worn for cosmetic purposes. (Men's Correctional Institution, Hardwick, Georgia)

U.S. Appeals Court
FILING FEES
FRIVOLOUS SUITS
IN FORMA PAUPERIS

Lay v. Anderson, 837 F.2d 231 (5th Cir. 1988). An inmate at the Louisiana State Prison filed a Section 1983 action for the violation of his civil rights. The U.S. District Court dismissed, and the prisoner appealed. The appeals court found that a dismissal was proper where the district court had ordered the inmate to exhaust prison remedies on pain of dismissal with prejudice and he had failed to do so. As a sanction to the inmate for a frivolous litigation, the costs of the appeal would be taxed against him and he could not file further appeals in forma pauperis unless the district court certified the appeal to be in good faith or the inmate paid appellate costs taxed. The court noted that "Appellant Lay, an inmate at the Louisiana State Prison in Angola, is no stranger to the federal courts. Acting pro se, he has filed at least a half dozen petitions for habeas corpus relief and several prisoner civil rights cases. In this case, as the magistrate aptly noted, the activity ... has been lengthy and circuitous, although it should have been quite brief. We affirm the district court's grant of summary judgment for appellees. We also tax costs of this appeal against Lay, pursuant to 28 U.S.C. section 1915(e). The costs are payable from his prison account or any other source of assets or income he may have. The costs will include at least the $105 court of appeals fees". In assessing these sanctions, the court noted that there has recently been a "significant increase in the number of pro se, usually prisoner, civil rights actions", and that the "large majority of these cases are without even arguable legal footing." Because they take up an "astonishingly large" amount of judicial time and resources and divert attention from other matters, the court hoped that the sanctions imposed would help deter frivolous litigation. (Louisiana State Prison)

U.S. District Court
LAW LIBRARY
LEGAL MATERIALS

Long v. Beyer, 676 F.Supp. 75 (D.N.J. 1988). A federal district ruled that an inmate was entitled to a preliminary injunction to ensure the protection of his constitutional right to legal access. Paralegals should be named to serve and assist the inmates in the prison's capital sentences unit. The injunction established procedures for providing legal assistance to the inmates. In addition, the court noted that the installation of a small law library in the unit would alleviate many of the problems with the legal access plan and would ensure that the inmates would receive meaningful legal assistance. A small law library would allow inmates to do sufficient research to make suitable, specific requests in the prison law library. (New Jersey Capital Sentences Unit)

U.S. District Court
LAW LIBRARY
LEGAL MATERIAL
LEGAL ASSISTANCE

Martin v. Davies, 694 F.Supp. 528 (N.D.Ill. 1988). A county jail inmate brought a civil rights action against two clerks at the jail's law library alleging that the clerks denied him meaningful access to courts by refusing to notarize legal documents and provide stamps and that the clerks unduly restricted his access to the law library. The district court dismissed the complaint, finding that the inmate failed to demonstrate that he suffered any actual harm since the clerks ultimately notarized the inmate's legal documents and the inmate managed to mail the documents later that day. The inmate could not maintain a claim against the clerks alleging that library policies unduly restricted his access to the law library and prevented him from consulting with fellow inmates while in the library since the appropriate recourse for the inmate was to seek relief under the terms of a 1982 consent decree in which the administrators at the jail were required to provide the inmates with sufficient access to the law library. (Cook County Jail, Illinois)

U.S. Appeals Court
FRIVOLOUS SUITS

Martinez v. Griffin, 840 F.2d 314 (5th Cir. 1988). A federal appeals court ruled that an inmate's suit for inadequate treatment for his peptic ulcer was frivolous and that the prison-provided diet had been adequate. Evidence clearly showed that the inmate had not suffered deliberate indifference to serious medical needs. There was evidence at the hearing that he was receiving adequate medication and treatment, that adequate foods were available in the prison diet for someone with a peptic ulcer, and that his complaints about the foods were based upon certain foods available to prisoners which he knew he should not eat. The court noted that this case is one of an increasing number of examples of attempts by prisoners to use the courts as a general grievance procedure to complain about whatever matters having to do with their incarceration they do not like. The court stated that if there were an effective way to assess a monetary sanction against the inmate, it would do so. However, the record indicates the prisoner has no money at all in a prison account. (Texas Department of Corrections)

U.S. Appeals Court
FRIVOLOUS SUITS
RETALIATION FOR LEGAL ACTION
COURT COSTS

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. District Court
RETALIATION FOR LEGAL ACTION

Morales Feliciano v. Hernandez Colon, 704 F.Supp. 16 (D. Puerto Rico 1988). An inmate brought a motion for contempt against officers and employees of the Commonwealth Correction Administration for allegedly violating a court order prohibiting officers and employees from retaliating against an inmate who spoke out concerning prison conditions. The district court found that officers and employees had sufficient notice of the court's previous order, and the inmate established a violation of the order by clear and convincing evidence. The officers were each ordered to pay $125 to an inmate who they roughed up and tear gassed. They were retaliating after the inmate met with lawyers in connection with a prison conditions case pending against the Commonwealth of Puerto Rico. (Guayama Regional Detention Center, Puerto Rico)

U.S. Appeals Court
FILING FEES
INDIGENT INMATE

Prows v. Kastner, 842 F.2d 138 (5th Cir. 1988), cert. denied, 109 S.Ct. 364. Two prisoners had filed complaints against prison officials. The court ordered them to pay $60 and $120, respectively, toward filing fees before being allowed to proceed. The inmates claimed that the trial court abused it's discretion by "ignoring" other demands placed on the income which they received from working at the prison. The inmates made between $125 and $185 per month. The court ruled that the required payments did not pose an undue financial hardship on either inmate. (Federal Correctional Institution, Texarkana, Texas)

U.S. District Court
ACCESS TO COURT
LAW LIBRARY
LEGAL MATERIAL

Reutcke v. Dahm, 707 F.Supp. 1121 (D.Neb. 1988). A prisoner sued prison officials alleging that the prison's policy regarding access to legal materials denied the prisoner his right to access to the courts. Following an evidentiary hearing and report and recommendation by a U.S. Magistrate, the district court adopted the report and recommendation, and found that the prison's policy regarding access to legal materials denied the prisoner his right to access to the courts. The warden was not entitled to qualified good faith immunity. The prisoner was entitled only to nominal damages; he was not entitled to punitive damages. The prisoner who was denied physical access to the prison law library during the time he was in protective custody was denied his right of access to courts by the prison warden, even though the prisoner was given access to "legal aides," insofar as the aides were not trained in the law. (Diagnostic and Evaluation Center, Nebraska Department of Corrections)

U.S. Appeals Court
LEGAL MATERIAL

Richardson v. McDonnell, 841 F.2d 120 (5th Cir. 1988). According to a federal appeals court, delaying or even losing an inmate's legal mail will not always amount to a violation of the inmate's constitutional rights. An inmate sued local jail officials after two writs of habeas corpus were never received by the clerk of court's officer for filing. The court found the evidence showed, at most, that prison officials had negligently lost the mail and nothing indicated that the mail had intentionally been mishandled. The court also noted that the facility had reasonable mail procedures in place for the handling of prisoner mail. Officials were not liable, the court found, because to find a constitutional violation it would be necessary to show that the officials had engaged in intentional misconduct in handling of the mail. Further, even if intentional conduct had been shown, there would still be no liability in this case because the prison's error was noted in time so that the inmate could re-prepare and timely file his writs without harming his case. (Louisiana State Prison)

U.S. Appeals Court
FRIVOLOUS SUITS

Simmons v. Poppell, 873 F.2d 1243 (5th Cir. 1988). A prisoner filed a civil rights lawsuit charging that prison officials had failed to adequately investigate and locate a radio that was removed from his cell by a prison official who was not named as a defendant. The inmate appealed after the court dismissed the action as frivolous. The lower court ruled that the due process clause is not implicated by a state official's negligent act causing unintended loss of property. The inmate was alerted, the appeals court noted, by the trial court that his action was frivolous, and it affirmed the dismissal of the inmate's frivolous lawsuit and ordered that he pay costs in the amount of $75.00. (Texas)

U.S. District Court
PRO SE LITIGATION
RIGHT TO COUNSEL

Stewart v. McMickens, 677 F.Supp. 226 (S.D.N.Y. 1988). Appointment of counsel is mandated, with respect to a prisoner's civil rights action, only where an individualized assessment suggests that an apparently legitimate case cannot proceed without the assistance of an attorney. The legitimacy of the case must be apparent from the face of the prisoner's pro se pleading. (Woodbourne Correctional Facility)

U.S. Appeals Court
CLOTHING-COURT

Tarpley v. Dugger, 841 F.2d 359 (11th Cir. 1988), cert. denied, 109 S.Ct. 101. A defendant whose clothing had been confiscated following his arrival at the county jail was not unconstitutionally "compelled" to appear for trial in prison clothing. Although the trial court denied the defendant's motion for funds to purchase civilian clothing, the defendant had been granted time to seek clothing from social agencies and other sources, at least some of which indicated that they would have furnished clothing on request. The Constitution is not violated every time a defendant appears before jury in prison clothes, where such appearance is not compelled. (Martin County Jail)

U.S. Appeals Court
LEGAL ASSISTANCE

Valentine v. Beyer, 850 F.2d 951 (3rd Cir. 1988). A federal appeals court ruled that inmates were entitled to a preliminary injunction against an implementation of changes to the prison's legal assistance program. The proposed change would have consolidated ILA (Inmate Legal Assistance) paralegals with the library staff and would have provided for supervision of all paralegals by the prison's Department of Education. Inmates argued that disbanding the ILA and denying them an opportunity to meet would violate their right to adequate access to legal information, pointing to the lack of provision for additional access to legal training of the law library paralegal staff, who they argued functioned more as a "messenger service" getting requested materials than as providers of "high quality" legal services. The appeals court upheld the determination that shutting down the group would cause irreparable harm to the provision of adequate legal assistance as it was determined by the trial court that the legal services of the ILA were generally of a "much higher caliber" than that of the law library paralegals. (Trenton State Prison, New Jersey)

U.S. District Court
FRIVOLOUS SUITS

Vester v. Murray, 683 F.Supp. 140 (E.D. Va. 1988). When an inmate did not receive services from the prison dentists as quickly as he felt necessary he filed a lawsuit against the dentists and several jail administrators alleging "cruel and unusual punishment." The court found that the dentists were not "under color of law" since the dentists did not

exercise custodial or supervisory duties in the prison. Further, no allegation of inadequate medical treatment or injury was shown - only "dissatisfaction" with the wait. The inmate was directed by the court to pay attorneys' fees and costs to the defendants for this meritless lawsuit. The court also noted that the inmate plaintiff was a "renown" writ writer. (Virginia)

U.S. Appeals Court
FRIVOLOUS SUITS

Whittington v. Lynaugh, 842 F.2d 818 (5th Cir. 1988), cert. denied, 109 S.Ct. 108. An inmate's civil rights complaint alleging that prison officials discriminated against him by not raising him to a trusty level that would have enabled him to have some time outdoors was frivolous. According to the court, the case was a classic one of an inmate making wholly unsupported allegations of a minor discrimination against him in his prison status, and then tying up the courts for three years. The inmate had no factual support for his protest. Ordering $15 to be withdrawn from a prisoner's prison account to reimburse the court for court costs incurred in the prisoner's frivolous section 1983 action, which was based on the claim that he was not being moved up the trusty ladder as fast as he felt he was entitled to and was unsupported by facts, was a proper sanction under Rule 11. (Texas Department of Corrections)

1989

U.S. Appeals Court
ACCESS TO COUNSEL

Alexander v. State of Conn., 876 F.2d 277 (2nd Cir. 1989), cert. denied, 111 S.Ct. 2831. A state prisoner petitioned for a writ of habeas corpus after his murder conviction was upheld on appeal. The U.S. District Court dismissed the petition, and the prisoner appealed. The court of appeals held that the trial court should have suppressed the second of two confessions the prisoner made to a friend during jail visits because it was elicited in violation of his fifth amendment right to assistance of counsel at custodial interrogations, reversing and remanding the case. According to the court, where a suspect is in an inherently coercive environment such as a jail or a place where his freedom is significantly restricted, any interrogation is in custodial surroundings even though the suspect believes he is speaking to a friend. (Hartford Correctional Center, Connecticut)

U.S. District Court
IN FORMA PAUPERIS

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
LEGAL MATERIALS
LEGAL ASSISTANCE
TRANSFER

Blake v. Berman, 877 F.2d 145 (1st Cir. 1989). A Massachusetts state prisoner filed a civil rights action alleging that he was deprived of access to the courts by being incarcerated in a federal penitentiary in Kansas which did not possess adequate sets of state legal materials. The U.S. District Court entered judgment in favor of the defendants, and appeal followed. The appeals court, affirming the decision, found that the prisoner was not denied access to courts where he had access to a law school clinical program that provided inmates with legal assistance, notwithstanding that the clinic employed a screening process to weed out frivolous claims. (Federal Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
ACCESS TO COURTS
DUE PROCESS

Bonacci v. Kindt, 868 F.2d 1442 (5th Cir. 1989). A federal prisoner alleged that a warden was denying him access to courts and due process, as well as violating Bureau of Prison regulations by not allowing a fellow inmate to assist the prisoner in a telephonic hearing to be held in district court. The district court dismissed the petition without prejudice, ruling that the prisoner had no right to inmate representation at the hearing. The appeals court found that the prisoner's constitutional rights were not infringed by denying his request for assistance by an inmate and affirmed the lower court decision. (Federal Correctional Institution, LaTuna, Texas)

U.S. Appeals Court
FRIVOLOUS SUITS
IN FORMA PAUPERIS

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. District Court
JAILHOUSE LAWYERS
LAW LIBRARY
LEGAL ASSISTANCE

Gilland v. Owens, 718 F.Supp. 665 (W.D. Tenn. 1989). Convicted inmates and pretrial detainees brought a Section 1983 action challenging conditions at a county jail. The U.S. District Court found that the inmates and detainees failed to establish that incidents of delayed medical attention occurred with sufficient frequency to violate the eighth amendment and due process rights to medical care. It was also stated by the court that the legal services at the county jail through the inadequate law library, two untrained jailhouse lawyers, and consultation with inmates' attorneys on pending criminal cases deprived convicted inmates and pretrial detainees of the constitutional right of access to courts, even though nothing showed that any inmate or detainee was unable to file a lawsuit. The amount of the sheriff's budget for various categories and sources of revenue was irrelevant in the action challenging the constitutionality of the conditions at the county jail. (Shelby County Jail, Memphis, Tennessee)

U.S. District Court
LEGAL MATERIALS

Hadix v. Johnson, 712 F.Supp. 550 (E.D. Mich. 1989). Inmates brought a motion to clarify a section of a consent decree entered in the inmates' class action suit against the Michigan Department of Corrections. The district court found that a prison rule which limited the amount of legal materials that prisoners could possess to that which could be contained in one footlocker did not violate the consent decree. The "one footlocker rule" balanced the prison's interest in security and fire safety against inmates' interest in access to the courts. The prison was required to hold administrative hearings on excess legal materials within 30 days of seizure. (Central Complex of the State Prison of Southern Michigan)

U.S. Supreme Court
ACCESS TO COURT

Hardin v. Straub, 109 S.Ct. 1998 (1989). An inmate brought a Section 1983 action alleging that prison authorities deprived him of federal constitutional rights. The U.S. District Court dismissed the complaint and appeal was taken. The appeals court affirmed in an unpublished opinion. Upon grant of certiorari, the U.S. Supreme Court, reversing and remanding, found that state statutes suspending limitations periods for those under legal disability, including prisoners, until one year after disability has been removed was consistent with Section 1983, and thus, the inmate's action was not time barred though it had been filed after the expiration of a three-year statute of limitations period for personal injury actions. In 1986, the petitioner, who was incarcerated in a Michigan state prison, filed a pro se complaint under 42 U.S.C.A. Section 1983 alleging that prison authorities had deprived him of his federal constitutional rights during 1980 and 1981. The federal district court sua sponte dismissed the complaint because it had been filed after the expiration of Michigan's 3-year statutory limitations period for personal injury actions, which is applicable in federal civil rights actions under 42 U.S.C.A. Section 1988 and the Court's decisions. The court of appeals affirmed, refusing to apply a Michigan statute that suspends limitations periods for persons under a legal disability, including prisoners, until one year after the disability had been removed.

Held: A federal court applying a state statute of limitations to an inmate's federal civil rights action should give effect to the State's provision tolling the limitations period for prisoners. The Court of Appeals' ruling to the contrary conflicts with **Board of Regents, University of New York v. Tomanio**, 446 U.S. 478, 1000 S.Ct. 1790, 64 L.Ed.2d 440, which held that limitations periods in Section 1983 suits are to be determined by reference to the appropriate state statute of limitations and the coordinate tolling rules, as long as the state law would not defeat the goals of the federal law at issue. The Michigan tolling statute is consistent with Section 1983's remedial purpose, since some inmates may be loathe to sue adversaries to whose daily supervision and control they remain subject, and even those who do file suit may not have a fair opportunity to establish the validity of their allegations while they are confined. Pp. 1999-2003. 836 F.2d 549 (C.A.6 1987) reversed and remanded. (Michigan State Prison)

U.S. Appeals Court
ACCESS TO COUNSEL
ACCESS TO COURT
CIVIL SUIT

Hernandez v. Whiting, 881 F.2d 768 (9th Cir. 1989). A prisoner brought a civil rights action, alleging that in January 1982, while in pretrial detention at the San Luis Obispo County jail, deputy sheriffs drugged him, beat him, and then locked him in an isolation cell for three days without clothing, water, or a mattress to sleep on. Hernandez filed pro se a civil rights suit against the officers in October 1983, and an amended complaint in February 1984. The U.S. District Court dismissed the suit for failure to appear at trial, and the prisoner appealed. The appeals court, reversing and remanding, found that the dismissal for

failure to appear due to incarceration was inappropriate. Before dismissing the prisoner's pro se action for failure to appear due to incarceration, the trial court must investigate reasonable alternatives to such severe sanction, including, for example, a bench trial in the prison, a trial by deposition, and compelling the prisoner's prisons through ad testificandum writ. The prisoner had pursued his case up to trial as diligently as a pro se plaintiff could have been expected to perform. The district court knew before trial that the prisoner's imprisonment would be a barrier to his attendance, the prisoner's testimony was crucial, and the case had survived a summary judgment motion. (San Luis Obispo County Jail, California)

U.S. Appeals Court
FILING FEES
INDIGENT
INMATES

In Re Epps, 888 F.2d 964 (2nd Cir. 1989). A prisoner sought a writ of mandamus through trial court to accept the filing of a civil rights lawsuit without the payment of a fee. The appeals court found that the courts may require prisoners to pay partial filing fees. The use of a percentage of deposits in the prisoner's trust account over the last three months is reasonable. In determining whether that computation requires a fee from which a particular prisoner is entitled to relief, the amount of the fee must be looked at in relationship to the prisoner's current balance. The requirement that the prisoner, whose balance at the end of each month was no more than $20, pay $18.47 was excessive and the filing fee would be reduced to $6. (Shawangunk Correctional Facility, New York)

State Appeals Court
ACCESS TO
COUNSEL
TELEPHONE

In re Grimes, 256 Cal.Rptr. 690 (Cal.App. 1 Dist. 1989). An inmate filed a petition for writ of habeas corpus, challenging the replacement of direct dial pay telephones in jail with collect-only telephones. The superior court entered an order requiring the installation of a free telephone line connecting the jail with the public defender's office. On review, the court of appeals, affirming the decision, found that a collect-only telephone system denied the inmates at the jail reasonable access to counsel guaranteed by the fourteenth amendment. Inmates are guaranteed a right to adequate, effective and meaningful access to courts under the fourteenth amendment, an essential component of which is the right of access to counsel. The right is possessed not only by convicted prisoners, but by pretrial detainees jailed pending trial. The collect-only telephone system denied inmates at the jail reasonable access to counsel guaranteed by the fourteenth amendment. The collect-only system unreasonably restricted communications between inmates at the jail and their attorneys and no reasonable justification for restrictions or alternative to free telephone lines were offered. Neither administrative inconvenience nor lack of resources can provide justification for deprivation of constitutional rights. The essence of the respondent's complaint is that the public defender's office and some private attorneys and other county offices refused to accept collect calls from jail inmates, thereby compromising his access to counsel and the courts. (Humboldt County Jail, California)

State Appeals Court
FRIVOLOUS
SUITS

Johnson v. Lynaugh, 766 S.W.2d 393 (Tex.App.--Tyler 1989). An inmate brought an in forma pauperis action against the director of the Department of Corrections. The 349th District Court dismissed the suit as frivolous, and the inmate appealed. The appeals court, affirming the decision, found that the trial court did not abuse its discretion in dismissing the case as frivolous. The inmate claimed that the policy denying him a cassette tape player in his cell deprived him of something necessary in order for him to meditate three times daily, a practice of his religion. The court stated that "a rule denying inmate's unfettered possession of objects which could be used for weapons is certainly reasonable." (Texas Department of Corrections)

U.S. District Court
ACCESS TO COURT
LEGAL MATERIAL

Kness v. Sondalle, 725 F.Supp. 1006 (E.D. Wis. 1989). An inmate brought a civil rights action alleging that he was placed in segregation status and denied an opportunity to perform legal research. The defendants moved to dismiss. The district court found that the inmate failed to state a Section 1983 cause of action arising out of only a 20-day delay in access to the court. While prisoners have a constitutional right of access to the courts for both pursuing their post-conviction remedies and for challenging the conditions of their confinement, this right is not absolute. They are guaranteed "meaningful, not total or unlimited access," the court commented. It rejected claims of a constitutional violation by an inmate who asserted that he could not "effectively research the law, or prepare effective and meaningful documents to help resolve his legal problems" while confined to an isolation cell for twenty days. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983
FRIVOLOUS SUITS
IN FORMA
PAUPERIS

Moody v. Miller, 864 F.2d 1178 (5th Cir. 1989). A prison inmate filed a Section 1983 challenging conditions of confinement. The U.S. District Court dismissed with prejudice prior to service, and the inmate appealed. The appeals court affirmed the decision, finding that the prison inmate who was hospitalized and through no fault of prison officials was unable to attend a scheduled disciplinary hearing was not denied due process by the failure of prison officials to reschedule the hearing to a date when the inmate could attend, and the

inmate's Section 1983 complaint, which was about his 23rd such complaint filed in the last three years, was frivolous, warranting an imposition of sanctions. The appeals court' prohibition against the inmate's prosecuting any more in forma pauperis appeals, absent certification of good faith by the district court, until he paid sanctions imposed in six of his prior Section 1983 suits did not apply to an appeal from the order dismissing before service his Section 1983 suit, where the dismissal order and notice of appeal were filed before the decision. The court upheld sanctions of $275 for court costs. (Texas Department of Corrections)

U.S. Supreme Court
ACCESS TO COUNSEL
DUE PROCESS
LAW BOOKS
LAW LIBRARY

Murray v. Giarratano, 109 S.Ct. 2765 (1989). Indigent death row inmates brought a class action alleging entitlement to appointed counsel for state postconviction proceedings. The U.S. District Court ordered partial relief, and appeal was taken. The court of appeals affirmed in part and reversed in part. Upon reconsideration en banc, the court of appeals affirmed. On certiorari review, the Supreme Court found that neither the eighth amendment nor due process clause requires states to appoint counsel for indigent death row inmates seeking state postconviction relief, upholding the State of Virginia's system of providing certain legal resources, but not attorneys, to such inmates. The State of Virginia allows such inmates access to a law library or law books, and maintains a staff of "unit attorneys" to assist with incarceration-related litigation. It also authorizes the court-appointment of counsel after a petition for post-conviction relief is filed, but does not authorize it for purposes of preparing such petitions. (Virginia Department of Corrections)

U.S. Appeals Court
DUE PROCESS
RETALIATION
RIGHT TO COUNSEL

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
FRIVOLOUS SUITS

Rogers v. Isom, 709 F.Supp. 115 (E.D. Va. 1989). A Virginia inmate filed a complaint pursuant to Section 1983 alleging that the detention center's practice of rubber stamping outgoing mail violated his first amendment rights. The district court dismissed the action as frivolous. It found that the detention center's policy of stamping its address on the back of envelopes of all outgoing inmate mail did not violate the inmate's first amendment rights, even if the stamped address covered part of a religious message placed by the inmate on the back of an envelope. The practice insured that the recipient would be aware of the origin of the mail, and the limitation was not greater than that needed to serve a governmental interest and the practice was not shown to be part of an intentional effort to censor the inmate's religious message. For purposes of the exercise of the court's discretion to dismiss frivolous complaints without an issuance of process, the determination of frivolousness on the basis of affirmative defense is appropriate even though no responsive pleadings have been filed. (Loudoun County Adult Detention Center, Virginia)

U.S. Appeals Court
TYPEWRITER
LEGAL MATERIALS

Sands v. Lewis, 886 F.2d 1166 (9th Cir. 1989). A prisoner brought an action alleging a denial of access to courts and a violation of free speech rights as a result of prohibition against the possession of a typewriter with memory capability exceeding 28 characters, unavailability of carbon paper, and a prohibition against having carbon paper in his cell. The appeals court found that the prisoner was required to allege actual injury to access to courts, and the prohibition against the prisoner's possession of a typewriter with memory capability exceeding 28 characters did not violate the prisoner's free speech rights. According to the court, the constitution does not require a maximum or even optimal level of prisoner access to courts and does not require an elimination of all economic, intellectual, and technological barriers to litigation. (Central Unit, Arizona State Prison)

U.S. Appeals Court
FILING FEES
IN FORMA PAUPERIS

Sellers v. U.S., 881 F.2d 1061 (11th Cir. 1989). The U.S. District Court required a prisoner to pay a partial filing fee of $14 in order to pursue a civil rights complaint against prison officials. The prisoner appealed. The appeals court found that requiring a payment of $14 partial filing fee was not an abuse of discretion, given the prisoner's receipt of $20 to $50 per month from his family and his discretionary spending. District courts enjoy a wide discretion in deciding whether a partial filing fee is fair and appropriate in cases in which the petitioner seeks to proceed in forma pauperis. In setting a partial fee, the court may consider the purpose of the rule imposing the filing fee, litigation history of the petitioner, apparent good faith in prosecution of the lawsuit, the actual dollars involved as well as percentages, and a

basic policy that the court is open to all good faith litigants. The fact that the prisoner's funds were derived from family sources did not compel the conclusion that the filing fee had to be waived. The petitioner had an average monthly balance of $47 in his account, he received $20 to $50 per month from his family, and spent between $56 and $80 annually for tennis shoes. (Federal Correctional Facility, Alabama)

U.S. Appeals Court
INDIGENT INMATES
POSTAGE

Smith v. Erickson, 884 F.2d 1108 (8th Cir. 1989). An inmate filed a civil rights lawsuit claiming that he was being denied access to the courts because of an alleged prison policy of not supplying indigent inmates with postage and writing supplies for legal correspondence. A federal appeals court overturned the trial court dismissal of the claim. The court held that the prison officials may not constitutionally refuse to provide free postage or supplies to indigent inmates for their legal mail. The court also held that the inmate stated a claim for a violation of his constitutional rights because of a purported policy of requiring inmates to use for their legal correspondence only envelopes purchased from the prison canteen. The inmate asserted that the mail room refused to mail two pieces of his legal correspondence because he used manila envelopes not purchased from the canteen, which he had brought with him to the prison, and thus impeded his access to the courts. (Minnesota Correctional Facility, Stillwater)

U.S. Appeals Court
ACCESS TO ATTORNEY

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. District Court
ACCESS TO COURTS
FILING FEES
FRIVOLOUS SUITS
PRIVILEGED CORRES.

Summers v. Salt Lake County, 713 F.Supp. 1415 (D.Utah 1989). An inmate brought a civil rights action for alleged denial of rights to access to courts in a manner insuring privacy. The district court found that the inmate failed to state a cause of action, and the inmate was liable for costs. According to the court, the inmate's civil rights complaint failed to avert any facts implicating any defendants, other than the "mail officer" at the county jail, in the alleged denial of the inmate's rights to access to courts in a manner insuring privacy and failed to allege facts showing policy, ordinance or custom of the defendant county of opening legal mail. Therefore, the inmate failed to state an action against any defendant except the "mail officer" and was not entitled to vacation of the magistrate's opinion dismissing the complaint as to all defendants except the "mail officer."

The frivolity of the inmate's in forma pauperis civil rights action, when combined with his disregard of a prior court order, the number of lawsuits the inmate had filed in court, and his dilatory tactics in the action, compelled the district court to tax the inmate for costs and prohibit him from filing further in forma pauperis actions unless the judge to whom the case is assigned certifies that action is in good faith or until the inmate has paid the costs taxed. (Salt Lake County Jail, Utah)

U.S. Appeals Court
DUE PROCESS
LEGAL MATERIAL
SEARCHES

Vigliotto v. Terry, 873 F.2d 1201 (9th Cir. 1989). An inmate brought a civil rights action against prison officials following the seizure of materials from the inmate's cell. The U.S. District Court granted summary judgment in favor of the officials, and the inmate appealed. The court of appeals affirmed. In an amended opinion, the appeals court found that the inmate was not deprived of meaningful access to the courts in violation of due process when the prison officials seized legal materials from his cell that he planned to use in his state court appeal. The materials were held by officials for only three days, and were picked up by a person of the inmate's choosing. The officials' search of the inmate's cell for unauthorized material was not cruel and unusual punishment in violation of the eighth amendment. The temporary deprivation of the inmate's legal materials does not, in all cases, rise to constitutional deprivation. The inmate contended that since the search occurred two weeks before the briefs were due in his appeal and since he was representing himself, this seizure denied him adequate access to the courts. (Maximum Security Prison, Florence, Arizona)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE
LEGAL MATERIAL

Watson v. Norris, 729 F.Supp. 581 (M.D.Tenn. 1989). On the parties' objections to the report and recommendation of a U.S. Magistrate, denying summary judgment motions in a prisoner's civil rights action, the district court found that the Tennessee correctional institution deprived inmates in protective segregation of their constitutionally guaranteed right of access to courts by unreasonably limiting their access to prison law library materials and legal assistance. Though the inmates in segregation could be prohibited from physically attending the law library, they had to be given advance knowledge of what books and materials were available and relevant to their research, and the decision as to whether to respond to calls for assistance from the segregation unit rested in the sole discretion of "jailhouse lawyers." The court also found that the warden and other prison officials were entitled to a defense of qualified immunity; although the institution's arrangement for providing access to the prison law library materials and legal assistance was insufficient, there was no body of authority such that any reasonable officer should have known in advance that arrangement was unconstitutional. (Turney Industrial Center and Farm, Tennessee)

U.S. District Court
JAIL HOUSE LAWYERS
LEGAL MATERIAL

Weaver v. Toombs, 756 F.Supp. 335 (W.D. Mich. 1989). Inmates sued prison officials, a prison warden, and a director of the Department of Corrections, alleging that defendants violated the inmates' First Amendment right of access to courts by intercepting, censoring, and confiscating legal materials sent by two of the inmates to the third. The defendants moved to dismiss. The district court found that where the prisoners did not allege that the prison warden or director of the Department of Corrections committed, authorized, or approved the seizure of those materials, the warden and director were entitled to dismissal, as the mere fact that the warden and director found the grievance concerning the seizure to be without merit was insufficient to state a claim against them. In addition, the confiscation of the legal materials did not violate the inmate's First Amendment right of access to courts, as the inmates had no written "jail-house lawyer" agreement for legal assistance. It was shown that the prison regulations requiring such an agreement, approved by prison staff, furthered a legitimate interest of preventing exploitation of prisoners by others. (Michigan Department of Corrections)

U.S. Appeals Court
ACCESS TO ATTORNEY
FRIVOLOUS SUITS
POSTAGE

White v. White, 886 F.2d 721 (4th Cir. 1989). An inmate filed a pro se civil rights action alleging he was deprived of meaningful access to the courts as a result of the prison policy requiring nonindigent inmates to pay cash for postage. The district court dismissed the pro se complaint as frivolous, and the inmate appealed. The appeals court, affirming the decision, found that dismissal of the complaint was not an abuse of discretion absent an allegation of any detriment to the inmate resulting from his inability to mail letters to his attorney. (Huttonsville Correctional Center, West Virginia)

U.S. District Court
POSTAGE
PRIVILEGED COMMUNICATION

Willis v. Lane, 738 F.Supp. 1198 (C.D.Ill. 1989). A former inmate brought a civil rights action alleging that prison officials violated his constitutional rights by interfering with his legal or privileged mail. On the parties' cross motion for summary judgment, the district court found that prison officials did not violate the inmate's constitutional rights. Although the prisoner has a right to access to courts, which necessarily includes the right to use the mail system, he does not have a right to unlimited free postage. The prison authorities are permitted to make a reasonable attempt to balance the right of the prisoners to use mails with the prison budgetary concerns. The prisoner's so-called "privileged" mail did not fall within the Illinois Department of Corrections' definition of privileged mail, and prison officials acted in good faith and consistently with constitutional and regulatory guidelines in returning those items to the prisoner. The prison officials properly refused to send out an oversized envelope which was not privileged and exceeded the allowance of three one-ounce letters per week. (Danville Correctional Center, Illinois)

1990

U.S. District Court
ACCESS TO COURT
TRANSFER

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
RETALIATION FOR LEGAL ACTION

Baker v. Zlochowon, 741 F.Supp. 436 (S.D.N.Y. 1990). An inmate brought a civil rights suit against prison officials, alleging a pattern of harassment in retaliation for his commencement of lawsuits. On the officials' motion for summary judgment, the U.S. District Court found that a genuine issue of material fact existed as to whether the officials' treatment of the inmate with regard to his work in the prison upholstery shop was part of a pattern of harassment of the inmate in retaliation for his commencement of lawsuits and conduct in aiding other inmates in legal actions, precluding summary judgment. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
FRIVOLOUS SUITS

Battle v. Central State Hosp., 898 F.2d 126 (11th Cir. 1990). A federal appeals court held that an inmate's claims of excessive and unnecessary medication did not lack an arguable basis in law so as to warrant a dismissal for frivolity. Claims may lack an arguable basis in law, which warrants a dismissal for frivolity under the in forma pauperis statute, from either factual or legal inadequacies. Factual allegations are "frivolous" when they are "clearly baseless" and legal theories are "frivolous" when they are "indisputably meritless." Allegations by the inmate implicated eighth amendment concerns and evidence of the inmate's mental illness was not inconsistent with his claims. (Georgia State Prison)

U.S. District Court
ACCESS TO COUNSEL

Bauer v. Henman, 731 F.Supp. 903 (S.D. Ill. 1990). A petition for a writ of habeas corpus was brought by a prisoner alleging constitutional violations regarding proceedings before an institution's disciplinary committee. The U.S. District Court found that the prisoner failed to indicate the reason for his failure to exhaust administrative remedies. The prisoner's request for counsel was denied and the motion to dismiss, made by the defendants, was granted. The prisoner's explanation that direct appeal to general counsel regarding his placement in the control unit would have been repetitious and would have further delayed his petition for habeas corpus did not amount to "cause" sufficient to excuse the failure to exhaust administrative remedies. The court also noted that an allegedly indigent prisoner was not entitled to appointed counsel in a habeas corpus proceeding. The prisoner did not need assistance of counsel in order to pursue his administrative remedies. (U.S. Corr. Inst., Sandstone, Minn.)

U.S. District Court
ACCESS TO COUNSEL

Benny v. O'Brien, 736 F.Supp. 242 (D.Kan. 1990). An inmate who was subjected to a prison disciplinary hearing petitioned for a writ of habeas corpus. The district court found that the inmate had no due process right to counsel or to counsel substitute, where it was clear that the inmate was articulate and qualified to prepare a defense, and that he was able to present a coherent argument to the disciplinary committee. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
PRO SE LITIGATION
ACCESS TO COUNSEL

Bumgarner v. Lockhart, 920 F.2d 510 (8th Cir. 1990), cert den., 111 S.Ct. 2898. A state inmate filed a habeas corpus petition. The U.S. District Court denied relief, and the inmate appealed. The court of appeals found that the inmate's solitary confinement for a few days prior to trial did not interfere with his ability to prepare for trial or to obtain an attorney, as prior to trial he never attempted to notify the trial court, or anyone else, that he wanted to hire an attorney, and at the hearing he failed to demonstrate how the confinement prejudiced his defense. Evidence supported the finding that the inmate's waiver of counsel was knowing and intelligent, despite his contention on the day of trial that he was in the process of attempting to obtain an attorney and the request for continuance to do so; the inmate vigorously insisted on proceeding pro se and even filed a writ of mandamus to compel ruling on his motion to do so, and the trial court unsuccessfully attempted to dissuade him from proceeding pro se. (Arkansas Department of Corrections)

U.S. Appeals Court
PRIVILEGED COMMUNICATION

Burton v. Nault, 902 F.2d 4 (6th Cir. 1990). A prisoner appealed a decision by the U.S. District Court to grant summary judgment for the prison officials that the prisoner had brought a civil rights action against. The appeals court affirmed the lower court decision finding that the prison officials were justified in reading an unmailed letter addressed to the prisoner's attorney which was found next to the prisoner after an attempted suicide. Prison officials must demonstrate that regulations authorizing the censorship of a prisoner's mail furthers one of the substantial interests of security, order, or rehabilitation and the limitation of the prisoner's first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. If there were any first amendment concerns arising out of actions of prison officials in reading the letter, the actions were justified by the need of prison officials to determine if the letter mentioned any drug use in the attempted suicide. (Marquette Branch Prison, Michigan)

U.S. District Court
ACCESS TO COURT

Chandler v. Coughlin, 733 F.Supp. 641 (S.D.N.Y. 1990). Inmates filed a civil rights action challenging, among other things, a prison directive that limited the amount of free postage available to the inmates. The U.S. District Court dismissed the suit and the inmates appealed. The appeals court reversed and remanded the case for further proceedings. After the cases were coordinated, the prison officials moved for a summary judgment.

The New York Department of Corrections free postage program supplies free postage in a sum that is equivalent to five domestic first class letters of one ounce or less per week to all inmates. Inmates are not permitted to accumulate the unused postage from week to week; but under the policy, funds may be advanced for additional postage for sending legal mail only. Up to $20 is routinely advanced for sending legal mail. The District Court found that the inmates' due process right of access to court was not violated by a prison directive that limited the amount of free postage available to the inmates. In most cases, the legal mailings of inmates could be carried out within the authorized postage allowances and, in unusual cases, advances were available. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
ACCESS TO ATTORNEY

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. Appeals Court
FRIVOLOUS SUITS

Divers v. Department of Corrections, 921 F.2d 191 (8th Cir. 1990). An inmate in protective custody brought a Section 1983 action against the Missouri Department of Corrections, a prison superintendent, and a unit manager to challenge different treatment of inmates in lock-down protective custody. The U.S. District Court dismissed the complaint as legally frivolous, and the inmate appealed. The court of appeals found that the following claims were not frivolous: better treatment given to certain subgroups in protective custody, denial of religious services, allotment of only 45 minutes of exercise time per week, inadequate laundry facilities and cleaning supplies, inadequate diet, inadequate clothing, and limitation on phone calls to attorneys. (Missouri Training Center for Men)

U.S. District Court
JAILHOUSE LAWYERS
LAW LIBRARY
LEGAL ASSISTANCE

Gallipeau v. Berard, 734 F.Supp. 48 (D. R.I. 1990). An inmate brought a Section 1983 action against correctional officers and other officials to challenge the seizure of legal papers from his cell. The defendants moved for a summary judgment. The district court found that the inmate had no right to be a jailhouse lawyer. The motion was granted in part and denied in part. According to the court, inmates housed in a prison with a law librarian and law clerks had no right to an independent jailhouse attorney, and, thus, the inmate had no right to give legal assistance to other inmates. Under **Bounds v. Smith**, 430 U.S. 817 (1977), providing inmates with either law libraries or the assistance of persons trained in the law meets constitutional requirements and access to jailhouse lawyers is only required when such resources are not available. (Maximum Security Unit, Adult Correctional Institution, Rhode Island)

U.S. District Court
LEGAL MATERIALS
LEGAL ASSISTANCE

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 legal assistance provided to protective custody inmates and the existing book request system for those inmates did not provide the inmates with meaningful, adequate access to the courts. The inmates were not able to browse through materials in order to compare legal theories and formulate ideas, they experienced delays in receiving books, and occasionally received books other than the ones requested, and their requests to have citation checks were often completed improperly. (Clinton Correctional Facility, New York)

U.S. Appeals Court
IN FORMA PAUPERIS
FRIVOLOUS SUITS

Hernandez v. Denton, 929 F.2d 1374 (9th Cir. 1990). A prisoner filed suit against prison officials, alleging Section 1983 violations. The U.S. District Court dismissed the claims as frivolous, and the prisoner appealed. The court of appeals affirmed in part and reversed in part, and certiorari was granted. The U.S. Supreme Court vacated and remanded for further consideration. On remand, the court of appeals found that the prisoner's allegations of 28 homosexual rapes by inmates and prison officials at different prisons did not lack a legal and factual basis, as required to dismiss claims as frivolous. While it was hard to believe that so many similar incidents actually occurred, it could not be said that none of them occurred. The plaintiff was therefore allowed to file an amended complaint, to spell out more details of the purported attacks. (Atascadero State Hospital, California)

U.S. District Court
CIVIL SUIT
IN FORMA PAUPERIS

Hodge v. Prince, 730 F.Supp. 747 (N.D.Tex. 1990). An indigent prisoner who was proceeding in forma pauperis in a civil action sought the issuance of a subpoena without paying witness fees. The district court found that the statute permitting the commencement of a civil action without prepayment of fees or costs by a person unable to pay the cost does not provide the statutory waiver of witness fees, and requiring the indigent litigant to pay the witness fees did not violate his

constitutional right of access to the courts. It is not constitutionally offensive to the right of access to the courts to require an indigent civil litigant to comply with the rules necessary to facilitate the functioning of the justice system, including the payment of transcript costs, expert witness fees, and fees to secure depositions. (Dallas Police Department, Texas)

U.S. District Court
IN FORMA PAUPERIS

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
POSTAGE
LEGAL MATERIAL
LAW LIBRARY

Housley v. Killinger, 747 F.Supp. 1405 (D. Or. 1990). A federal inmate brought an action against a prison warden alleging that the warden had violated his constitutional rights by precluding the prisoner from effective access to federal courts because of limited resources and accessibility of the law library. The government brought a motion for summary judgment. The district court found that the prisoner failed to exhaust his administrative remedies. He was required to establish through administrative review the record necessary for the trial court to determine the validity of his claim, and thus the inmate's failure to initiate administrative review of his claim resulted in the claim being dismissed. It was also found that the warden was entitled to qualified immunity, as regulations of the Bureau of Prisons governed the operation of the law library, the regulations had never been held inadequate, and thus the conduct of the warden in abiding by the regulations did not violate clearly established rights. In addition, it was found, that the federal inmate failed to establish that he was denied his constitutional right to court access due to a lack of an adequate prison law library. The prison law library had adequate resources including paper, pens, and notarial services, the library was open more than 40 hours per week, and stamps were available free of charge to indigent inmates and could be purchased by other inmates. (Federal Correction Institution, Sheridan, Oregon)

U.S. District Court
PRIVILEGED CORRESPONDENCE

Jackson v. Norris, 748 F.Supp. 570 (M.D. Tenn. 1990), affirmed, 928 F.2d 1132. An inmate brought a Section 1983 action against a Commissioner of Corrections, a warden, and a mailroom clerk to recover for alleged constitutional violations stemming from the mailroom clerk's handing of legal mail. The U.S. District Court found that the conduct of the prison mailroom clerk in opening the inmate's privileged legal mail out of the inmate's presence and depositing a check from the Tennessee Claims Commission directly into the inmate's prison account amounted to no more than mere negligence and was not actionable under Section 1983. The inmate failed to allege any facts which would suggest that the clerk was motivated by personal prejudice, that the clerk intended to interfere with the inmate's access to the courts, or otherwise acted in a capricious manner. (DeBerry Correctional Institute, Tennessee)

U.S. District Court
APPOINTED ATTORNEY
ACCESS TO COUNSEL

Jermosen v. Coughlin, 745 F.Supp. 128 (W.D.N.Y. 1990). A prisoner sued prison authorities for deprivation of constitutional rights, claiming failure to provide medical care, malicious punishment in retaliation for bringing lawsuits, wrongful refusal to transfer him to a different facility and wrongful placement in keeplock confinement. The prisoner moved for appointment of counsel. The district court found that the prisoner was entitled to appointment of counsel to represent him in the civil rights action against the prison as each of his claims would constitute constitutional deprivations if proved, and even though the prisoner had conducted an appreciable amount of discovery on his own, the issues were sufficiently complex to warrant legal assistance. (Elmira Correctional Facility, New York)

U.S. Appeals Court
FRIVOLOUS SUITS
IN FORMA PAUPERIS

Lawler v. Marshall, 898 F.2d 1196 (6th Cir. 1990). An inmate brought a pro se civil rights action against corrections officers for their conduct in handling alleged abusive behavior by another prisoner. The plaintiff alleges that the defendants, both of whom are correctional officers, failed to prevent another inmate from throwing food, coffee, milk, bars of soap, and urine at the plaintiff, who alleges that the defendants witnessed the attack but that they ignored the plaintiff's requests for help and laughed at him. The U.S. District Court dismissed the action as frivolous under in forma pauperis statute, and the inmate appealed. The appeals court, reversing and remanding, found that the complaint was not frivolous; the complaint stated

a claim upon which relief could be granted; and the inmate should have been permitted to amend the complaint for a third time. The inmate stated civil rights claims against the corrections officers for gross negligence or reckless indifference in handling the abusive conduct of another prisoner, where the inmate alleged that corrections officers laughed while other prisoner abused him and subsequently encouraged other prisoner to abuse him again, and that prison officials were aware of all inmates' fear of other prisoner's abuse. (Southern Ohio Correctional Facility)

U.S. Appeals Court
ACCESS TO COURT
FRIVOLOUS SUITS

Mayfield v. Collins, 918 F.2d 560 (5th Cir. 1990). A prisoner brought a civil rights complaint against state prison officials under Section 1983. The U.S. District Court dismissed the complaint and appeal was taken. The court of appeals dismissed the appeal and imposed a sanction, finding that dismissal of the appeal was warranted, as claims made were either frivolous or had been decided adversely against the prisoner in a class action lawsuit, and as this was the 38th civil procedure the prisoner had brought against the prison, subsequent pro se complaints must be approved by a judge before filing. (Department of Criminal Justice Institutional Division, Texas)

U.S. District Court
IN FORMA PAUPERIS
LEGAL MATERIAL

McClaflin v. Pearce, 739 F.Supp. 537 (D. Or. 1990). A state inmate brought a civil rights action against prison officials alleging a violation of his rights under the first, eighth and fourteenth amendments. The inmate, who sought a preliminary injunction directing that he be allowed to have a plastic rosary and extended visits with a priest, failed to establish the possibility of irreparable injury due to the prison prohibiting his possession of a rosary or that the balance of hardships tipped in his favor sufficient to warrant the issuance of a preliminary injunction. The rosary and extended visits with a Catholic priest were not essential elements of the religion and could be withheld from an inmate who is in a disciplinary segregation unit, even though provided to inmates in the general population. (Eastern Oregon Correctional Institution)

U.S. District Court
LEGAL ASSISTANCE
LAW LIBRARY
LEGAL MATERIAL
TRANSFER

Messere v. Fair, 752 F.Supp. 48 (D. Mass. 1990). A Massachusetts inmate who was transferred to a Connecticut prison brought a civil rights action against officials of the Massachusetts Department of Corrections alleging he was denied access to the courts. Both parties moved for partial summary judgment. The U.S. District Court found that the inmate was denied access to the courts; the Connecticut prison library lacked Massachusetts materials the inmate needed for his Massachusetts cases and although materials from the Connecticut state library were available by means of a copy service, the service required that materials be requested by specific citations and specific volumes and failed to provide adequate access. (Massachusetts Department of Corrections)

U.S. Appeals Court
FRIVOLOUS SUITS

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. Appeals Court
EXHAUSTION
JAILHOUSE LAWYERS
LEGAL ASSISTANCE

Munz v. Nix, 908 F.2d 267 (8th Cir. 1990). A state prisoner brought a civil rights action challenging a decision of prison officials to prohibit the prisoner from serving as a jailhouse lawyer. The U.S. District Court denied preliminary injunctive relief and stayed further consideration of the prisoner's complaint pending exhaustion of state postconviction relief. The prisoner appealed. The appeals court, reversing and remanding, found that the district court's order was a collateral order and therefore appealable, and the prisoner's challenge to confinement conditions was not required to be stayed pending exhaustion of state postconviction relief. While there is no personal right to be a jailhouse lawyer, a prison must allow prisoners to assist one another unless there is available to prisoners a reasonable, alternative means of legal assistance. (Iowa State Penitentiary)

U.S. District Court
LEGAL MATERIAL

Murphy v. Dowd, 757 F.Supp. 1019 (E.D. Mo. 1990), cert. den., 116 LE2 626, affirmed, 938 F.2d 187. An inmate sued corrections officials, alleging that he was denied access to the courts by an institutional regulation limiting the amount of paper, including legal papers, an inmate could retain in his cell, and by a regulation requiring that legal papers in excess of that amount be stored in accordion folders in the institution's property room. The officials moved for summary judgment. The U.S. District Court found that the regulations were constitutional; to the extent that access to all legal materials may not have been immediate and the inmate's access to courts were thereby burdened, the regulations were rationally related to legitimate penological interests of fire safety and minimizing contraband. The regulations were not applied to the inmate in an arbitrary and capricious manner for retaliatory reasons; the inmate's deposition testimony showed that the regulation allowing one box of legal materials was applied to him as written, and that he was given an opportunity to go through his papers in the property room, and the inmate signed a statement indicating that he had taken what he needed from those boxes. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
FRIVOLOUS SUITS
IN FORMA PAUPERIS

O'Loughlin v. Doe, 920 F.2d 614 (9th Cir. 1990). An inmate attempted to file a pro se civil rights complaint in forma pauperis, alleging disregard by prison officials of a request for medication and prison overcrowding. The U.S. District Court denied the inmate leave to file his complaint in forma pauperis, and required the inmate to follow special procedures in any future attempts to proceed in that status, and the inmate appealed. The court of appeals found that the trial court did not abuse its discretion in denying the inmate in forma pauperis status in light of the inmate's prior filings seeking that status and a facially frivolous medical deprivation claim the inmate was attempting to assert. The inmate was alleging that the defendants had exhibited deliberate indifference by repeatedly failing to satisfy his request for aspirins and antacids. It was also found that remand was required to allow the trial court to give the inmate an opportunity to oppose the filing by the district court of an order placing special conditions on the inmate's future attempts to file in forma pauperis, even though the order presented an adequate record for review by including a list of the inmate's previously filed cases; the order failed to make explicit substantive findings as to the frivolousness or harassing nature of the inmate's filings, and the order was not narrowly tailored to the inmate's claimed abuses. (Washington State Prison)

U.S. District Court
ACCESS TO COURT
POSTAGE

Rentschler v. Campbell, 739 F.Supp. 561 (D. Kan. 1990). An inmate of a county jail brought a civil rights suit alleging that his constitutional right of access to courts was violated by the refusal of defendants to mail letters and pleadings from the inmate to the court of appeals. On defense motion to dismiss, the district court granted the motion, finding that the jail policy requiring a nonindigent inmate seeking to mail a package with postage with more than 25 cents to sign an official form releasing the amount necessary to pay the postage and then requiring the jail personnel to take the released funds and mail the package did not violate the inmate's constitutional right of access to courts, even though the letters and brief the inmate had attempted to mail to the appeals court, on which the inmate had placed sufficient postage stamps, were returned unmailed to the inmate for lack of compliance with the policy. (Leavenworth County Jail, Leavenworth, Kansas)

U.S. District Court
FRIVOLOUS
SUITS

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. District Court
LEGAL MATERIAL

Savko v. Rollins, 749 F.Supp. 1403 (D. Md. 1990), affirmed, 924 F.2d 1053. Inmates brought an action challenging a state prison regulation limiting the amount of written material they could keep in their cells. On the prison officials' motion for summary judgment, the district court found that the prison regulation limiting inmates to 1.5 cubic feet of books and other written materials in a cell did not impermissibly infringe upon the inmates' right of access to the courts, although the regulation made inmate legal research less convenient. According to the court, the plaintiffs were left with ample opportunities for access to the courts through established legal assistance programs, some prison

libraries and the monthly rotation system for in-cell legal materials. There appeared to be no obvious alternatives to the limitations on the amount of material to be kept in cells which would not significantly drain prison financial resources. In addition, even if the regulation infringed the inmates' right of access to courts, the state's asserted justifications for the rule, including fire safety and prison security, furthered legitimate penological concerns, as required to satisfy federal standards. (Maryland State Correctional System)

U.S. District Court
ACCESS TO COURT
JUVENILES

Shookoff v. Adams, 750 F.Supp. 288 (M.D. Tenn. 1990). A class action was brought on behalf of persons who are confined or will be confined in secure institutions operated by the Tennessee Department of Youth Development alleging that they were denied a right of access to the courts. On the plaintiff's motion for summary judgment, the U.S. District Court found that incarcerated juveniles have a right of access to the courts comparable to incarcerated adults, and the Tennessee Department of Youth Development was not providing juveniles with meaningful access to the courts. The secure facilities did not contain law libraries, nor were there jailhouse lawyers or inmate writ writers available to assist fellow inmates, and in most cases, local legal services offices were unable to assist juveniles upon request. The Commissioner of the Tennessee Department of Youth Development was required to submit a plan to remedy the constitutional violation. (Tennessee Department of Youth Development)

U.S. Appeals Court
APPOINTED
COUNSEL
PRO SE LITIGATION

U.S. v. Robinson, 913 F.2d 712 (9th Cir. 1990), cert. den., 111 S.Ct. 1006 and 114 S.Ct. 1102. A defendant was convicted in the U.S. District Court of drug offenses, and the defendant appealed. The court of appeals found that the defendant's request to proceed pro se was unequivocal, as required for a valid waiver of right to counsel, despite his expression of feeling "forced" to proceed pro se. The defendant sought and was allowed to represent himself during the entire trial, expressed his preferences, albeit cagily, several times, and was considered by the district court, after exhaustive examination, to have made a clearly articulated choice. However, the pro se defendant's motion for appointed counsel at sentencing should have been granted, despite the government's contention that both the timing of and declaration that the defendant filed with the motion demonstrated bad faith. The district court made no finding of bad faith, feeling that, having rejected professional representation at trial, the defendant was not entitled to trouble the court with the subsequent request. (No Location)

U.S. Appeals Court
FRIVOLOUS SUITS
IN FORMA
PAUPERIS

Vinson v. Texas Bd. of Corrections, 901 F.2d 474 (5th Cir. 1990). An inmate appealed from an order of the U.S. District Court which denied his motion for relief from final judgment. The appeals court found that the inmate's abuse of his right to proceed in forma pauperis warranted prohibiting him from filing further appeals with the court of appeals until he paid a sanction levied upon him by the district court for filing a plainly frivolous, malicious and vexatious civil rights complaint. (Texas Department of Corrections)

U.S. Appeals Court
FRIVOLOUS
SUIT
IN FORMA
PAUPERIS

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. Although the district court has a broad discretion in conducting a *Spears* hearing for frivolousness on the prisoner's in forma pauperis claims, use of prison records to counter the plaintiff's testimony is improper. (See: Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). (Texas Department of Corrections, Ellis II Unit)

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983
FRIVOLOUS SUIT
IN FORMA
PAUPERIS

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

U.S. Appeals Court
LAW LIBRARY
LEGAL
ASSISTANCE

Wood v. Housewright, 900 F.2d 1332 (9th Cir. 1990). An inmate brought a civil rights action against prison officials alleging deliberate indifference to his medical needs and denial of meaningful access to the courts. The U.S. District Court ruled in favor of the prison officials, and the inmate appealed. The appeals court, affirming the lower court decision, found that the conduct of the officials did not constitute deliberate indifference to medical treatment, and the inmate was not denied access to the courts. The system of satellite law libraries and inmate law clerks provided the inmate in the Nevada state prison was constitutionally adequate access to the courts, under the sixth amendment, although the inmate's access to the library was limited because of his special conditions of confinement. (Nevada State Prison)

1991

U.S. District Court
ACCESS TO COURT
LEGAL ASSISTANCE
LAW LIBRARY

Abdul-Akbar v. Watson, 775 F.Supp. 735 (D. Del 1991). An inmate at the Delaware Correctional Center brought a Section 1983 action challenging the constitutional adequacy of legal services provided to inmates in the maximum security unit. According to the court, prisoners have a constitutional right of access to courts. Prison authorities must assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law. To meet their obligations, prison officials may construct programs containing a combination of library resources and assistance from legally trained persons. It was found by the district court that the satellite library was not itself an adequate law library that would alone be sufficient. When inmates have been permitted to visit the satellite library, they were allowed to stay for one hour, and it was difficult to achieve significant progress in that time. The provision of assistance to inmates by legal professionals was insufficient to meet constitutional standards; paralegal assistance amounted to little more than filling photocopy requests. It had been found that the combination of services available to inmates essentially amounted to a limited paging system under which exact citations must be known, and paralegals who fill the photocopy requests. The court awarded the inmate $1500 in compensatory and punitive damages for inadequate legal services. (Delaware Correctional Center, Delaware)

U.S. Appeals Court
ACCESS TO
COUNSEL

Abdullah v. Gunter, 949 F.2d 1032 (8th Cir. 1991), cert. den., 112 S.Ct. 1995. An inmate brought a Section 1983 action against prison officials, claiming that denial of his request that $2.00 be withdrawn from his account in the Inmate Trust Fund and sent to a religious organization violated his due process, equal protection, and free exercise rights. According to the appeals court, to state an equal protection claim, the plaintiff must show at a minimum that the state has failed to treat similarly situated persons alike. The district court held that no equal protection violation occurred in view of undisputed evidence that all inmates under the auspices of the Department of Correctional Services were denied permission to make religious or charitable contributions from their inmate trust accounts. The appeals court found that the district court abused its discretion in denying the inmate appointed counsel at trial on the First Amendment free exercise claim. The indigent prisoner lacked sufficient resources to investigate the relevant facts. The inmate and the court would have benefitted greatly from having appointed counsel to investigate relevant issues. (Nebraska State Penitentiary, Nebraska)

U.S. District Court
ACCESS TO COURT
EXHAUSTION

Caley v. Hudson, 759 F.Supp. 378 (E.D. Mich. 1991). A petition was filed for writ of habeas corpus in which an inmate challenged his confinement for a parole violation on the grounds that the Michigan Parole Board denied him a revocation hearing by relying on an unconstitutional provision of state law. The U.S. District Court denied the petition, finding that the inmate had available to him a state remedy in the form of state habeas corpus action and his failure to exhaust that remedy required a dismissal of the federal habeas proceeding. (Lakeland Correctional Facility, Michigan)

U.S. District Court
IN FORMA
PAUPERIS

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. (Kansas City Honor Center, Kansas)

U.S. Appeals Court
ACCESS TO COUNSEL
VISITS

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, finding upholding the prison policy. (Arizona Department of Corrections)

U.S. District Court
ACCESS TO COURT

Cello-Whitney v. Hoover, 769 F.Supp. 1155 (W.D. Wash. 1991). An inmate brought a civil rights action alleging abuse of rights by prison staff. The defendants moved to dismiss the action as frivolous and to severely limit the inmate's right to initiate further actions in forma pauperis. A U.S. Magistrate recommended an order restricting the inmate's future

access to court and certifying appeal as not taken in good faith. The report and recommendation was adopted, and the district court found that an injunction against more than three in forma pauperis applications per calendar year was justified as a result of the inmate's filing of several actions and motions in bulk purely for the purpose of putting the State to the cost and burden of defending and responding. It was also found that the inmate's appeal was not taken in good faith and could not be taken in forma pauperis. (Washington)

U.S. District Court
ACCESS TO COURT
POSTAGE

Chilton v. Atwood, 769 F.Supp. 267 (M.D. Tenn. 1991). A nonindigent inmate brought a civil rights action, claiming that prison officials interfered with his access to courts by not providing postage stamps for a notice of appeal. The district court found that the inmate was not denied the right to meaningful access to courts when he ran out of stamps before he could order more from the commissary and when the inmate counselor refused to mail the notice of appeal for him, with the result that the appeal was not considered, notwithstanding inmate's reference to the corrections policy dealing with indigent inmates. The inmate had economic means to purchase stamps and had an opportunity to purchase them each week, and policy did not impose a duty on the counselor to obtain postage for a nonindigent inmate who simply failed to timely purchase stamps. (Riverbend Maximum Security Institution, Nashville, Tennessee)

U.S. Appeals Court
FILING FEES
FRIVOLOUS SUITS
IN FORMA PAUPERIS
ACCESS TO COURT

Cofield v. Ala. Public Service Com'n., 936 F.2d 512 (11th Cir. 1991). After granting summary judgment against an inmate in a suit brought against prison officials and a long distance telephone company, the U.S. District Court dismissed with prejudice all the inmate's current suits and required the inmate to pay full filing fees and seek prefiling approval of any complaints or papers he filed in the future. The inmate appealed. The appeals court found that federal courts may limit the filing of frivolous lawsuits on a case-by-case basis, so long as judges merely screen out frivolous and malicious claims and allow arguable claims to go forward. The in forma pauperis status of the litigious inmate should be evaluated on a case-by-case basis, and an order prospectively requiring the inmate to pay full filing fees could not be sustained, where the record did not support a finding that the inmate had access to some money and even if the inmate were able to afford his filing fees currently, he might not always be able to do so. (West Jefferson Correctional Facility, Alabama)

U.S. Appeals Court
PRO SE LITIGATION
ACCESS TO COUNSEL

Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078 (5th Cir. 1991). An inmate brought a pro se Section 1983 action against jail officials, alleging an unconstitutional deprivation of food. The U.S. District Court dismissed the case for failure to state a claim, and the inmate appealed. The court of appeals found that the dismissal of the action was premature absent a copy of the regulation pursuant to which the jail officials allegedly acted in requiring the inmate to be fully dressed before his meals would be served; there was disagreement concerning the interpretation of the regulation. According to the court, the inmate satisfied his obligation to allege sufficient facts in his complaint to overcome the presumption of immunity. It was also found that the assertion by the inmate bringing the pro se Section 1983 action that his "mental anguish" prevented his attending to the suit did not satisfy "exceptional circumstances" requirement for appointment of counsel, and the inmate's transfer to another prison rendered moot his claims for injunctive relief. (Lubbock County Jail, Texas)

U.S. Appeals Court
ACCESS TO COUNSEL
TRANSFER

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. Supreme Court
WITNESS FEES

Demarest v. Manspeaker, 111 S.Ct. 599 (1991). A U.S. District Court denied witness attendance fees to a state prisoner who was subpoenaed to testify in federal court trials or grand jury proceedings, and the prisoner appealed. The court of appeals affirmed the lower court decision, and certiorari was granted. The Supreme Court reversed the decision and found that a convicted state prisoner who testified at a federal trial pursuant to a writ of habeas corpus ad testificandum was entitled to payment of witness fees. "There may be good reasons," the Court stated, "not to compensate prisoners for testifying at federal trial; they are seldom gainfully employed in prison, and therefore do not suffer the loss of income from attendance which many other witnesses do. But the same is true of children and retired persons, who are clearly entitled to witness fees under the statute and customarily receive them. We cannot say that the payment of witness fees to prisoners is so bizarre that Congress 'could not have intended' it." The Court relied, in

part, on the fact that Congress specifically excluded incarcerated witnesses from receiving a subsistence allowance, and reasoned that it therefore would have specifically excluded them from receiving witness fees if it wanted to do so. (U.S. District Court, Colorado)

U.S. Appeals Court
ACCESS TO ATTORNEY

Foster v. Basham, 932 F.2d 732 (8th Cir. 1991). Inmates sued a prison mailroom supervisor alleging that a mailroom policy of preventing inmates' access to telephone directory listings of attorneys sent to them was unconstitutional. The mailroom supervisor moved for summary judgment. The U.S. District Court concluded that the policy was unconstitutional but that the supervisor was entitled to qualified immunity, and the inmate appealed. The court of appeals agreed that the policy was unconstitutional. As the supervisor believed that the inmates had reasonable alternatives to acquiring names of attorneys, she was entitled to qualified immunity; however, the court found that having caseworkers supply inmates with a limited number of attorney names was not a reasonable alternative, particularly when the inmate might be suing the caseworker or his friends and associates. (Missouri State Penitentiary)

U.S. Appeals Court
IN FORMA PAUPERIS
FRIVOLOUS SUITS

Freeman v. Abdullah, 925 F.2d 266 (8th Cir. 1991). An inmate brought an action against the Nebraska Director of Corrections, the warden, and a Muslim coordinator to recover for alleged dissolution of a particular Muslim sect. The U.S. District Court dismissed the case prior to service of process, and the inmate appealed. The court of appeals, reversing and remanding, found that the inmate's allegations were not frivolous and should not have been dismissed. The inmate alleged that the dissolution of the sect violated his First and Fourteenth Amendment rights because it deprived him of religious classes, Jummah prayer, and Ramadan fasting. According to the court, there was an arguable basis underlying the inmate's factual allegations and legal theories. (Nebraska State Penitentiary)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Geder v. Roth, 765 F.Supp. 1357 (N.D. Ill. 1991). An inmate brought a Section 1983 action alleging that prison officials denied him meaningful access to the courts by failing to grant his additional requests for access to the law library. The district court found that the inmate failed to show that he was denied meaningful access to the courts. He was granted access five times for a total of ten hours, and he was not prejudiced by the lack of further access to the law library since orders he was required to prepare did not require legal research and the courts did not enter adverse rulings in his cases. Where the inmate had adequate access to the law library, he was not denied meaningful access to courts by his inability to receive assistance from a law clerk. (Stateville Corr. Center, Joliet, Illinois)

U.S. Appeals Court
LAW LIBRARY

Harris v. Thigpen, 941 F.2d 1495 (11th Cir. 1991). Inmates who had tested positive for the Human Immunodeficiency Virus (HIV) brought a civil rights action challenging various policies and procedures of the Alabama Department of Corrections. Non-HIV general population inmates intervened as defendants and the case was consolidated with similar actions pending in various federal courts. The U.S. District Court denied relief and the inmates appealed. The court of appeals found that more complete findings of fact and conclusions of law were necessary for a proper resolution of the claim by the inmates who had tested positive for HIV that they had been denied access to courts. The lower court's conclusion that the policy with respect to library hours did not deny meaningful access to courts seemed inconsistent with its findings that HIV infected inmates were entitled to more library time and that insufficient evidence existed to determine whether constitutionally adequate assistance was available. (Alabama Department of Corrections)

U.S. Appeals Court
FRIVOLOUS SUITS

Holt v. Caspari, 923 F.2d 103 (8th Cir. 1991). An inmate brought a civil rights action against prison officials alleging they violated his due process rights in disciplinary proceedings. The inmate charged that officials refused to provide him with documentary evidence that was to be used against him and that upgrading of the violation during deliberations effectively denied him his right to a notice of the charge in order to prepare his defense. The U.S. District court dismissed the action, and the inmate appealed. The court of appeals found that the civil rights complaint of the inmate stated a claim sufficient to require an answer from prison officials, and, thus, the complaint should not have been dismissed as being frivolous. (Missouri)

U.S. Appeals Court
APPOINTED ATTORNEY

Hughes v. Joliet Correctional Center, 931 F.2d 425 (7th Cir. 1991). A state prison inmate brought a civil rights suit against the prison and prison staff doctor and nurse, alleging medical malpractice constituting cruel and unusual punishment in treatment of the inmate. The U.S. District Court dismissed the defendants, and the inmate appealed. The court of appeals found that the district judge should have considered the state inmate's request for an attorney in light of the particulars of the inmate's suit rather than simply denying the inmate's request for an attorney in accordance with general policy that an attorney would not be requested for the indigent prisoner until and unless the judge decided that an evidentiary hearing was warranted, where the defendants had moved for summary judgment, thus shifting to the inmate the burden of producing his own evidence,

and the inmate had a colorable case, but medical records for the inmate introduced by the defendants might be sufficient to warrant summary judgment for them. In deciding whether to grant a motion requesting counsel for an indigent party, in a civil case, the district judge must be alert to the pitfalls that confront laymen in dealing with nonintuitive procedural requirements applied in a setting of complex legal doctrine. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
FRIVOLOUS SUITS

In Re Cook, 928 F.2d 262 (8th Cir. 1991). A pro se civil rights action was brought seeking damages for injuries allegedly sustained in a fall from a sheriff's van and from the refusal of the nurse at the jail to treat the injuries. The complaint was dismissed prior to service, as frivolous, by the U.S. District Court. On motion for writ of mandamus, treated as a notice of appeal, the court of appeals found that the complaint alleged only negligence against the sheriff and the sheriff's department, but the complaint alleged intentional refusal to treat the prisoner's injuries arguably stated a claim against the nurse at the county jail, and thus was not properly dismissed as frivolous. (St. Louis Jail, Missouri)

U.S. Appeals Court
FRIVOLOUS SUITS

Jackson v. Carpenter, 921 F.2d 68 (5th Cir. 1991). An inmate filed a suit alleging that during his detention in a county jail, the sheriff unlawfully removed from his head a silver dollar worth $126 million, and sent it to the Texas Department of Corrections which nefariously converted it in violation of his constitutional rights. The U.S. District Court dismissed the suit for failure to state a claim, and the plaintiff appealed. The court of appeals found that the trial court properly imposed a $30 sanction for filing a frivolous suit, and the inmate would not be allowed to file any further actions until the sanction was satisfied. It further stated that such continued abusive conduct will trigger increasingly severe sanctions, including the ultimate denial of access to the judicial system absent specific prior court approval. (Tarrant County Jail, Texas)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE
LEGAL MATERIALS

Kaiser v. County of Sacramento, 780 F.Supp. 1309 (E.D.Cal. 1991). Jail inmates brought an action seeking access to legal materials. The district court found that the pretrial detainees and convicts who alleged denial of access to the law library but who did not allege that they were denied access to alternative legal assistance had standing to challenge the adequacy of the law library. It was also found that an incarcerated pretrial detainee is entitled to limited access to law books and other legal materials, but the county is not obligated to facilitate nonlawyer legal assistance for pretrial detainees who are proceeding pro se. The "paging" or "slip" system for convicted inmates to obtain legal materials, standing alone, is unconstitutional. Finally, the court would not grant preliminary injunctive relief requiring the county to provide additional legal assistance to convicts held in jail. It was unclear whether the combination of paging assistance and legal assistance met constitutional requirements. The court did require the posting of a copy of reference materials available. (Sacramento County Jail and Rio Cosumnes Correctional Center, California)

U.S. District Court
ACCESS TO COUNSEL
LAW LIBRARY
TRANSFER

LaRue v. Fairman, 780 F.Supp. 1190 (N.D.Ill. 1991). An inmate brought a civil rights action against Illinois prison officials, claiming they denied him his right of access to courts by interfering with his access to Washington state legal materials. On the officials' motion for summary judgment, the district court found that the inmate did not knowingly refuse assistance of counsel in connection with his appeal in Washington courts, so as to excuse Illinois prison officials from providing him with a Washington law library. The inmate was not provided with court-appointed counsel, did not affirmatively choose to proceed with his appeal pro se, and his transfer out of state made communication with his attorney difficult and hampered his ability to retain alternative counsel when his original attorney withdrew from the case. In addition, fact issue as to whether officials delayed the inmate's access to Washington state legal materials until after his Washington appeal had been dismissed precluded summary judgment on the grounds that the inmate had failed to show prejudice. The court also found that the officials were not entitled to qualified immunity. Interference with the inmate's right of access to courts was not objectively reasonable, and officials advanced no legitimate security justification for their actions. (Joliet Correctional Center, Joliet, Illinois)

U.S. Appeals Court
APPOINTED ATTORNEY
IN FORMA PAUPERIS

Long v. Shillinger, 927 F.2d 525 (10th Cir. 1991). An inmate brought an action against a warden seeking damages for violations of his civil rights arising out of the warden's alleged permitting of Oklahoma to extradite the inmate without affording the inmate process due under Wyoming's Extradition Act. The U.S. District Court granted the inmate's motion for summary judgment and awarded the inmate nominal damages of one dollar, and the inmate appealed. The court of appeals found that, in determining whether to appoint counsel for in forma pauperis litigants, the district court should consider a variety of factors, including the merits of the litigant's claims, nature of factual issues raised in the claims, litigant's ability to present claims, and the complexity of the legal issues raised by the claims, and the trial court did not abuse its discretion in refusing to

appoint counsel for the inmate. In addition, the inmate failed to establish he was entitled to anything other than nominal damages. Evidence that the inmate was not guilty of crimes charged could not be considered by a court reviewing a habeas petition, the inmate made no showing that he could have prevented the extradition, and the attorney's fees and other expenses flowed from extradition, not from deprivation of due process. (Wyoming State Penitentiary)

U.S. District Court
ACCESS TO COURTS
ACCESS TO COUNSEL
LEGAL MATERIAL

Maillett v. Phinney, 755 F.Supp. 463 (D.Me. 1991). A former county jail inmate brought a civil rights action against the county sheriff, claiming that the sheriff deprived him of his Sixth Amendment right of access to courts during the period of the inmate's incarceration in the county jail. On the sheriff's motion for summary judgment, the U.S. District Court found that the inmate was represented by counsel during the period of his incarceration and was not denied his Sixth Amendment right of access to courts, regardless of the adequacy of the jail's law library or restraints on the inmate's use of that library. According to the court, the right of access to courts can be satisfied by "adequate assistance from persons trained in the law," regardless of the prisoner's lack of access to adequate legal materials. Because the prisoner was represented by counsel, "there was no violation" of his right of access to the courts. (York County Jail, Maine)

U.S. Appeals Court
ACCESS TO COUNSEL
LEGAL MATERIALS

Martucci v. Johnson, 944 F.2d 291 (6th Cir. 1991). A former pretrial detainee filed a Section 1983 action alleging various constitutional violations by sheriff's department officials in concert with a State Bureau of Investigation agent. The U.S. District Court entered summary judgment against the detainee and he appealed. The court of appeals found that the pretrial detainee was not denied access to courts, as the record disclosed that jail officials were in practice of providing legal materials to inmates "upon request" and that the detainee was represented by counsel appointed to defend him in a criminal case during the entire length of his detention. The record did not support a presumption that the detainee was barred from discussing legal implications of his segregated confinement with counsel, even though the counsel was not appointed to represent the detainee in the civil rights action. (Anderson County Jail, Tennessee)

U.S. District Court
ACCESS TO COURT
DUE PROCESS

Mathis v. Bess, 763 F.Supp. 58 (S.D.N.Y. 1991). Inmates brought a civil rights action against individual stenographers, claiming that the delay in filing appellate transcripts violated due process and amounted to cruel and unusual punishment. Upon the defendants' motion for reargument, the district court found that the individual stenographers were entitled to qualified immunity on the inmates' claim that delay in filing the appellate transcripts violated due process as, at the time the appeals were filed, there was case law suggesting that denial of a speedy appeal would not be denial of due process. The court also found that the finding that one inmate's claims were rendered moot by affirmance of his conviction did not render another inmate's claims moot, as no decision had been rendered on the merits of the latter inmate's appeal. (New York City Criminal Court)

U.S. District Court
LAW LIBRARY
LAW BOOKS

Nolley v. County of Erie, 776 F.Supp. 715 (W.D.N.Y. 1991). A former inmate infected with human immuno-deficiency virus (HIV) brought an action against a correctional facility and various facility administrators, alleging constitutional and statutory violations in connection with her treatment. The district court found that the inmate was denied her constitutional right of access to courts when ad hoc policy was applied to deny her direct access to any of the volumes in the law library and to deny her face-to-face contact with inmate law clerks. There was no rational connection between a legitimate goal of limiting the possibility of HIV transmission and denying the inmate access to the library. (Erie County Holding Center, New York)

U.S. Appeals Court
ACCESS TO COURT

Perko v. Bowers, 945 F.2d 1038 (8th Cir. 1991), cert. den., 112 S.Ct. 1482. A civil rights complaint filed by an inmate arising from alleged indifference to medical needs during his prior incarceration was dismissed by the U.S. District Court after the inmate escaped from prison for two days; the inmate appealed. The court of appeals found that the "fugitive from justice rule" should not be applied to civil cases in per se manner, and the inmate's escape for less than three days while his civil rights action was pending did not mandate dismissal under the "fugitive from justice rule," as the escape caused no disruption to court proceedings, and the action for alleged deliberate indifference to medical needs during prior incarceration was completely distinct and separate from the sentence he was serving at the time of his escape. (Missouri State Penitentiary)

U.S. District Court
FRIVOLOUS SUITS

Rial v. McGinnis, 756 F.Supp. 1070 (N.D. Ill. 1991). A pro se inmate brought a Section 1983 action, seeking permission to proceed in forma pauperis. The U.S. District Court found that the inmate's claims which sought relief that would effectively reduce his term of confinement could only by obtained by filing a petition for habeas corpus and, accordingly, his assertion of the claims in the Section 1983 action was frivolous and he was not entitled to permission to proceed in forma pauperis with respect to those claims. (Illinois Department of Corrections)

U.S. Appeals Court
LEGAL ASSISTANCE
LEGAL MATERIAL

Ruark v. Solano, 928 F.2d 947 (10th Cir. 1991). A prisoner filed a Section 1983 suit challenging conditions of his confinement. The U.S. District Court dismissed the complaint, and the prisoner appealed. The court of appeals found that an allegation that the Colorado Department of Corrections legal assistant failed to answer the prisoner's request for access to resources stated a claim for denial of access to legal materials. (Diagnostic Unit, Colorado Department of Corrections)

U.S. Appeals Court
LAW LIBRARY

Skelton v. Pri-Cor, Inc., 963 F.2d 100 (6th Cir. 1991). An inmate brought a Section 1983 action alleging the unconstitutional refusal to deliver a hardbound Bible and to grant access to the law library. The United States District Court entered summary judgment in favor of the defendant, and the inmate appealed. The appeals court, affirming the decision, found that the refusal to grant access to the prison law library unless the inmate filled out a request form was reasonably related to a legitimate penological interest in security and did not violate the inmate's right of access to courts. The inmate was represented by counsel at the time. (Greene County Detention Center, Tennessee)

U.S. Appeals Court
LEGAL MATERIAL

Sowell v. Vose, 941 F.2d 32 (1st Cir. 1991). A prisoner in a state institution alleged his constitutional right of access to courts was infringed by restrictions on his access to legal documents. The U.S. District Court granted summary judgment against the prisoner and he appealed. The court of appeals found that a prisoner has to show actual injury as a prerequisite to recovery in a civil rights action for alleged restriction of access to legal property if the prisoner does not allege absolute deprivation of access to all legal materials but rather complains of conditional restriction on access. (Massachusetts Correctional Institution, Cedar Junction)

U.S. Appeals Court
STATUTE OF LIMITATIONS

Street v. Vose, 936 F.2d 38 (1st Cir. 1991), cert. den., 112 S.Ct. 948. An inmate brought a civil rights action against the Commissioner of Corrections and others. The U.S. District Court dismissed and the inmate appealed. The court of appeals, affirming the decision, found that where the inmate's transfer, detention and segregation, and mail losses were all accomplished by March of 1982, his claims accrued by then and the civil rights action brought more than five years thereafter was time barred. The court noted that, the inmate, who had been described as suffering from schizophrenia, a sociopathic personality, and severe character disorder did not show that he had the mental incapacity which would toll the statute of limitations under Massachusetts law. (Massachusetts Correctional Institution, Concord)

U.S. Appeals Court
PRO SE LITIGATION
APPOINTED ATTORNEY

Tucker v. Randall, 948 F.2d 388 (7th Cir. 1991). A pretrial detainee filed a pro se civil rights complaint against officers at a jail. The U.S. District Court dismissed the complaint, and the detainee appealed. The court of appeals found that the appointment of counsel would be appropriate in the action brought by the indigent pretrial detainee against officers of the jail, where the detainee had presented a colorable claim of deliberate
indifference to his serious medical needs, the detainee's incarceration in a facility different from that in which the alleged conduct took place rendered him unable to investigate crucial facts, it was clear that the detainee could not present his case properly, and the detainee's complaint raised numerous complex constitutional issues. (Kendall County Jail, Illinois)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

U.S. v. Stotts, 925 F.2d 83 (4th Cir. 1991). An inmate filed a complaint alleging that prison officials were violating his constitutional rights by opening and reading his confidential legal mail. The inmate specifically challenged regulations specifying how incoming mail must be marked to qualify for confidential treatment as special or legal correspondence. The U.S. District Court declared the regulations unconstitutional as applied to the inmate, and enjoined the defendants from reading or opening mail bearing a return address of an attorney, law firm, court official or any government official, whether or not there were particular markings on the envelope. The Bureau of Prisons appealed. The court of appeals, reversing the decision, found that requirements that the legal sender be specifically identified on envelope and the requirement that confidential mail be marked as such were reasonably related to legitimate penological interests, and did not violate the inmate's constitutional right of access to the courts or his freedom of expression. (United States Bureau of Prisons, North Carolina)

U.S. Appeals Court
COURT COSTS
INDIGENT INMATES
IN FORMA PAUPERIS

Weaver v. Toombs, 948 F.2d 1004 (6th Cir. 1991). Prisoners at a state penal facility instituted a federal civil rights action against state prison officials, alleging deprivation of their constitutional rights. After granting the prisoners' motion to proceed in forma pauperis, the U.S. District Court dismissed the case. On in forma pauperis appeal, the court of appeals affirmed. The prison officials moved for an order taxing costs against the prisoners to be satisfied by a direct resort to their prison accounts. The court of appeals found that there was no constitutional basis for a rule barring collection of costs from indigent prisoners. In addition, the court of appeals had the authority to assess reasonable costs against unsuccessful in forma pauperis plaintiffs even if their claims

were not deemed frivolous, malicious, or vexations. The remand of the prisoner's civil rights action against state prison officials to the judicial officer who originally permitted the prisoners to proceed in forma pauperis was warranted to ascertain whether the prisoners, or any of them, could establish entitlement to relief from collection of costs assessed therein. The court of appeals was not equipped to deal with a hearing on the question of relief, or partial relief, or extension of time for payment of costs in the case of the in forma pauperis prisoner plaintiffs against whom assessment of costs had been made. (Ionia Maximum Correctional Facility, Michigan)

U.S. Supreme Court
IN FORMA PAUPERIS
FRIVOLOUS SUITS

Zatko v. California, 112 S.Ct. 355 (1991). Petitioners moved for leave to proceed in forma pauperis. The U.S. Supreme Court found that it would deny leave to proceed in forma pauperis to petitioners who had repeatedly abused the integrity of the system through frequent frivolous filings. (California)

1992

U.S. Appeals Court
ACCESS TO ATTORNEY
TELEPHONE

Aswegan v. Henry, 981 F.2d 313 (8th Cir. 1992). State prisoners sought preliminary and permanent injunctive relief contending that a prison policy prohibiting prisoners from making toll-free telephone calls even to their attorneys denied them access to courts. The U.S. District Court granted the injunction, and the prison appealed. The court of appeals, vacating and remanding, found that the prisoners were not entitled to enjoin prisons from enforcing the regulation prohibiting prisoners from making the toll-free telephone calls where the prisoners showed neither irreparable harm nor prejudice from the policy. Although prisoners have a constitutional right to meaningful access to courts, prisoners do not have a right to any particular means of access, including unlimited telephone use. The prison need only provide access to courts that is adequate, effective, and meaningful when viewed as a whole. The court noted that general population prisoners may make an unlimited number of collect telephone calls to their attorneys, and segregation prisoners may make two collect telephone calls per week. The prison has special telephones for prisoners' collect calls, and each call is limited to ten minutes. The prison allows unlimited correspondence and personal visits between prisoners and their attorneys. Prisoners also have access to a law library and may seek assistance from other prisoners through the jailhouse lawyer system. (Iowa State Penitentiary)

U.S. District Court
ACCESS TO ATTORNEY

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 provide easier access by the inmates' counsel. The district court found that the requirement that inmates' counsel be subject to a background check on an annual basis prior to visiting inmates in the county jail was not unconstitutional. These "checks" are apparently no different from access requirements existing in the past, and can apparently be done before the need arises to visit prisoners. According to the court, there had been no showing that the requirement of background checks substantially interfered with any plaintiffs' right to counsel, or that the problem can't be alleviated by a staff member's early application. The County may lawfully impose access restrictions in light of legitimate penal administration interests. (Orange County Jail, California)

U.S. Appeals Court
FRIVOLOUS SUITS
LEGAL MATERIAL

Brownlee v. Conine, 957 F.2d 353 (7th Cir. 1992). A prisoner brought a civil rights action against jail personnel, accompanied by a request to be permitted to proceed in forma pauperis, complaining about the treatment he received while confined in jail awaiting trial. The U.S. District Court dismissed the claims as frivolous, and the prisoner appealed. The court of appeals found that the claim that a jail official turned down requests to return documents needed for a suit that had been confiscated by a guard, and that the suit was dismissed because the documents were not returned, was not frivolous on its face. The detainee's claims that another jail official deliberately loosed mentally ill inmates on the detainee so that they would assault him, and that another official, in retaliation for the detainee's having complained about him to the jail doctor, refused to allow the prisoner to see a dentist though he was in severe pain, were, on their face, perfectly good claims of violations of the right that the due process clause grants persons held in jail awaiting trial to be spared punishment until they are convicted, and they should not have been dismissed as frivolous under the in forma pauperis statute. (Wisconsin Jail)

U.S. District Court
LAW LIBRARY

Caddell v. Allenbrand, 804 F.Supp. 200 (D. Kan. 1992). An inmate brought an action challenging restrictions on access to a law library. The district court found that the inmate's constitutional right of access to courts was not violated by supervising his access to the law library and restricting access to times when the library was not generally in use. The restrictions resulted from the discovery that the inmate had torn some pages from a law book. (Johnson County Adult Detention Center, Kansas)

U.S. District Court
ACCESS TO COURT
LEGAL MATERIAL
TRANSFER

Jaben v. Moore, 788 F.Supp. 500 (D. Kan. 1992). A prison inmate filed a Section 1983 action alleging a violation of his constitutional rights as a result of his transfer from a Kansas facility to the Missouri Department of Corrections. The district court found the transfer to Missouri did not result in a failure to provide the prisoner with legal access to Kansas courts; although he was advised of the fact that he should write to legal counsel at the Kansas State Penitentiary to obtain Kansas legal material, the inmate never did so. (Missouri Department of Corrections)

U.S. Appeals Court
LAW LIBRARY

Jenkins v. Lane, 977 F.2d 266 (7th Cir. 1992). An inmate housed in a protective custody unit brought a Section 1983 action alleging that the prison's library policy prevented adequate access to courts. The U.S. District Court dismissed the action on summary judgment and the inmate appealed. The appeals court, affirming the decision, found that substantial and continuous limitation on the inmate's access to court is any restriction on counsel or legal material that completely prevents the prisoner, or person acting in the prisoner's behalf, from performing preliminary legal research. However, the restrictions imposed upon inmates in protective custody to use the library were minor and incidental. Although the inmate was banned from the library, he was allowed to personally meet with clerks who could do research for him. The court noted that the prison's policy of banning the prisoners who were confined in protective custody from the library did not prejudice the inmate as there was no showing that the policy prevented the inmate from obtaining case law. (Pontiac Correctional Center Illinois)

U.S. Appeals Court
ACCESS TO
ATTORNEY
JUVENILES

John L. v. Adams, 969 F.2d 228 (6th Cir. 1992). Incarcerated juveniles who were or would be confined in secure institutions operated by the Tennessee Department of Youth Development brought a class action alleging denial of the right of access to courts. The U.S. District Court entered summary judgment in favor of the juveniles and the Commissioner of the Department appealed. The appeals court affirming in part, reversing in part, and remanding, found that the incarcerated juveniles' constitutional right of access to courts entitled them to access to an attorney. Merely providing access to a law library would fail to assure meaningful access. However, the incarcerated juveniles' right of access to courts extended only to civil rights actions related to incarceration. Thus, the district court could require the state to reimburse contract attorneys for work connected with Section 1983 actions only to the extent that they were related to the juveniles' incarceration. In addition, the incarcerated juveniles' right of access to courts did not entitle them to affirmative legal assistance on treatment and education issues arising solely under Tennessee law. (Taft Youth Center, Pikeville, Tennessee)

U.S. District Court
APPOINTED
COUNSEL

McCullough v. Scully, 784 F.Supp. 115 (S.D.N.Y. 1992). An inmate brought a Section 1983 action against correctional facility officials to recover for alleged deliberate indifference to medical needs. The officials moved for summary judgment. The U.S. Magistrate recommended dismissal. The district court found that the appointment of counsel for an indigent inmate could not be withdrawn based solely on the absence of a volunteer to take the case, and documents reflecting the consistent pattern of treatment for the inmate's varicose veins, including stockings, visits to physicians, and surgery, would have supported the denial of the indigent inmate's application for appointment of counsel in the Section 1983 action alleging deliberate indifference to medical needs. (Greenhaven Correctional Facility, Stormville, New York)

U.S. Appeals Court
FRIVOLOUS SUITS

Murphy v. Kellar, 950 F.2d 290 (5th Cir. 1992). A prisoner brought a Section 1983 action to recover for injuries from an alleged assault by deputies and inmates. The United States District Court dismissed the action as frivolous, and the prisoner appealed. The appeals court found that although the prisoner's complaint failed to specify which defendants participated in which actions, the in forma pauperis complaint was improperly dismissed as frivolous without allowing the prisoner to conduct discovery. The information that would enable the prisoner to identify the alleged attackers (duty rosters and personnel records) could be readily obtainable. (Harris County Jail, Texas)

U.S. District Court
PRIVILEGED
CORRESPON-
DENCE
SEARCHES

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. Appeals Court
FRIVOLOUS SUITS
PRO SE LITIGATION

Reneer v. Sewell, 975 F.2d 258 (6th Cir. 1992). A former inmate brought a pro se civil rights action against correctional officials, alleging they violated his First Amendment rights by reading his incoming legal mail. The U.S. District Court granted the defendants' motion for summary judgment, and the former inmate appealed. The appeals court, reversing and remanding, found that the prison officials were not entitled to summary judgment. If the inmate's mail was actually read, and the action was motivated by retaliation as the inmate alleged, the behavior would constitute the type of arbitrary, unjustifiable interference strictly proscribed in the Sixth Circuit. Limiting the future in forma pauperis filings by the prison inmate was proper. The inmate's seventeen prior cases in district court and nine appeals to the court of appeals involved largely frivolous claims and the inmate had deceived the courts in the past as to his ability to pay. In addition, denying the motion to appoint counsel was not an abuse of discretion. Appointment of counsel to the civil litigants in federal district court is a decision left to the sound discretion of the district court. The decision will be overturned only when denial of counsel results in fundamental unfairness impinging on due process rights. (Kentucky State Reformatory)

U.S. District Court
ACCESS TO COURT
SEARCHES

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 a search of his cell. On the defendants' motion for summary judgment, the district court 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. District Court
CLOTHING-
COURT

Saenz v. Marshall, 791 F.Supp. 812 (C.D. Cal. 1992), affirmed, 990 F.2d 1260. A state prisoner convicted of robbery filed a petition for a writ of habeas corpus. Based on a report and recommendation of a U.S. Magistrate Judge, the district court dismissed the suit. It found that permitting an alleged participant in a crime to appear before the jury for identification while dressed in prison clothing and under guard did not violate the defendant's due process right to a fair trial. Even if the rule prohibiting defendants from being required to appear at trial in prison clothing applied to the attire of witnesses, any error arising when the alleged participant in the underlying crime appeared before the jury for identification purposes while wearing prison clothing was harmless. Proof of the defendant's identity was strong, the alleged participant's appearance was brief, and a curative instruction was given. (California)

U.S. Appeals Court
LAW LIBRARY

Shango v. Jurich, 965 F.2d 289 (7th Cir. 1992). A state inmate sued prison officials alleging denial of access to courts due to limits on a law library's hours. The U.S. District Court determined that the state prison provided constitutionally adequate access to courts and the inmate appealed. The appeals court, affirming the decision, found that the limitation on the law library's hours did not result in denial of the inmate's right of access to courts. The prisoner was not denied legal access to courts because the prison's law library was closed nights, weekends, and holidays, and at other times due to lock down, construction, or shortage of guards or librarians absent any evidence of any delay or interruption in pending or contemplated litigation. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
POSTAGE

Smith v. Erickson, 961 F.2d 1387 (8th Cir. 1992). A prisoner brought a Section 1983 complaint against prison officers alleging that prison mailing policies were illegal. The U.S. District Court granted summary judgment against the prisoner, and appeal was taken. The court of appeals found that providing indigent inmates with one free mailing per week for legal correspondence complied with the requirement that the prison give indigent inmates free postage. Inmates needing additional financial assistance for mailing legal correspondence were allowed to maintain a negative balance in their account indefinitely. It was also found that the provision of free paper and pens for inmates through the prison library satisfied constitutional standards. (Minnesota State Prison, Stillwater, Minnesota)

U.S. District Court
ACCESS TO COURT
LEGAL MATERIAL
TRANSFER

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. Appeals Court
APPOINTED
ATTORNEY

Swofford v. Mandrell, 969 F.2d 547 (7th Cir. 1992). A pretrial detainee brought an action against a sheriff to recover for a beating and sexual assault by other inmates. The U.S. District Court dismissed the complaint for failure to state a claim, and the detainee appealed. The court of appeals, reversing and remanding, found that a due process claim

was stated against the sheriff by the pretrial detainee's allegations that he was arrested on suspicion of aggravated sexual assault, placed in a holding cell with ten inmates, and was jumped on, beat, kicked, urinated on, and sodomized with a broom handle. Neither the sheriff nor the deputy came to the detainee's aid despite repeated screams, no one inspected or guarded the cell for eight hours, and the sheriff "had to know" that the actions put the detainee's life in great danger. The court also found that the pretrial detainee was entitled to appointed counsel for the meritorious Section 1983 action as the state of mind required for a due process violation was difficult and subtle, the detainee had been unable to investigate crucial facts during his incarceration, the detainee's claim was likely to turn on the credibility of witnesses, and the detainee was unable to present the case adequately without counsel. (Franklin County Jail, Benton, Illinois)

U.S. District Court
CIVIL SUIT
LAW LIBRARY
PRO SE LITIGATION

U.S. v. Janis, 820 F.Supp. 512 (S.D. Cal. 1992). A preconviction detainee asserted that he was being denied a constitutional right of access to courts. The district court found that the detainee's constitutional right of access to courts includes access to courts for general civil legal matters. In addition, the inmate, who was representing himself, was entitled to at least two hours of law library time five days per week, with additional time preceding his motion and trial dates. Although the pro se detainee needed more library time than detainees represented by counsel, he did have standby counsel upon whom he could rely for some of his research. (Metropolitan Correctional Center, San Diego, California)

U.S. District Court
IN FORMA
PAUPERIS

Williams v. Gomez, 795 F.Supp. 978 (N.D. Cal. 1992). An inmate brought an action challenging conditions of his confinement. On the inmate's application to proceed without prepayment of fees or costs, the district court found that the inmate's affidavit saying he had no income or opportunity to work and earn income, together with a copy of his prison trust account statement showing that there was no money in the account, and little activity in preceding four months, was sufficient to allow the inmate to proceed in forma pauperis. (Pelican Bay State Prison, California)

U.S. District Court
LEGAL
MATERIALS

Williams v. ICC Committee, 812 F.Supp. 1029 (N.D.Cal. 1992). An inmate filed a pro se Section 1983 action against prison officials alleging that he had been deprived of his eyeglasses although he was legally blind, deprived of access to courts, denied an opportunity to make legal phone calls, and was discriminated against based upon his race. He also sought appointment of counsel pursuant to the in forma pauperis statute. The allegations that the inmate was deprived of his legal papers and that this deprivation left him unable to amend his complaint in another action as directed by court stated a cognizable claim for relief under Section 1983. (San Quentin Prison, California)

1993

U.S. Appeals Court
LAW LIBRARY
LEGAL ASSISTANCE

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

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Acevedo v. Forcinito, 820 F.Supp. 886 (D.N.J. 1993). A prisoner brought a Section 1983 action in which he alleged that prison officials violated his constitutional right to meaningful access to courts. The district court found that providing the non-English speaking prisoner with access to a law library did not automatically satisfy the duty to provide meaningful court access. Triable issues of fact precluded summary judgment for prison officials as a result of the failure to provide a Spanish-speaking legal assistant to the prisoner. (Cumberland County Jail, New Jersey)

U.S. District Court
LAW LIBRARY

Allen v. City and County of Honolulu, 816 F.Supp. 1501 (D. Hawaii 1993). An inmate brought a Section 1983 action against prison and government officials alleging violation of his constitutional rights. The officials moved for summary judgment claiming qualified immunity. The court ruled that the prison officials were not entitled to qualified immunity from liability in the state inmate's Section 1983 action alleging that he was forced to choose between law library time and outdoor recreation on any given day. Rights of access to the courts and to outdoor exercise were clearly established rights and to sanction a policy of forcing an inmate to choose between them would be tantamount to denying the inmate one of the rights. (Halawa Correctional Facility, Hawaii)

U.S. District Court
LEGAL MATERIAL
SEARCHES

Bernadou v. Purnell, 836 F.Supp. 319 (D. Md. 1993). An inmate filed a civil rights action against prison officials after documents were seized during a prison shakedown. The district court found that the inmate was not deprived of meaningful access to court because there was no indication that he suffered any detriment in preparing an application for postconviction relief that he began eight years earlier. According to the court, not every confiscation by prison officials of inmates' postconviction materials would amount to an actionable constitutional violation of the right of meaningful access to court; an inmate had to show actual injury to assert more than an abstract claim. (Maryland Penitentiary)

U.S. District Court
LAW LIBRARY

Bookless v. Bruce, 814 F.Supp. 52 (D. Kan. 1993). An inmate brought an action against prison officials, alleging violation of his right of access to the courts. On cross motions for summary judgment, the district court found that the limited resources and hours of the inmate law library did not violate the inmate's right of access to the courts. Inmates were afforded access to the holdings of the county law library, and assistance from a legal services provider was made available. Furthermore, the limited hours were caused by an extensive renovation project. Given these factors, the inmate failed to show how he was prejudiced. (Norton Correctional Facility, Norton, Kansas)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

Brewer v. Wilkinson, 3 F.3d 816 (5th Cir. 1993), cert. denied, 114 S.Ct. 1081. Inmates brought a Section 1983 suit against a mail room supervisor and a mail room clerk, alleging a constitutional violation arising from the handling of their mail. The United States District Court granted the defendants' motion for summary judgment and dismissed. The inmates appealed. The appeals court, affirming in part, reversing in part and remanding, found that the inmates, who claimed that their incoming legal mail was opened and inspected for contraband outside their presence in violation of prison rules, stated no cognizable claim for violation of their constitutional right of access to courts and free speech. The inmates did not assert that their ability to prepare or transmit necessary legal documents had been affected or that mail had been censored. They also conceded that opening and inspecting the mail was for the legitimate penological objective of prison security. However, one inmate's allegation that his outgoing legal mail was opened and material removed, thus preventing a "writ of mandamus" from arriving in district court, stated a cognizable claim for violation of his rights of free speech and access to courts. There was no suggestion that a legitimate penological interest justified the alleged removal of legal material. (Texas Department of Criminal Justice)

U.S. Appeals Court
JAIL HOUSE LAWYER
RETALIATION
TRANSFER

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. Appeals Court
LEGAL MATERIAL

Bryant v. Muth, 994 F.2d 1082 (4th Cir. 1993), cert. denied, 114 S.Ct. 559. An inmate sued prison officials alleging that the confiscation of his computer disks interfered with his constitutional right of access to courts. The U.S. District Court denied the prison officials' motion for summary judgment ruling that they were not entitled to qualified immunity. After the prison officials appealed, the court of appeals, reversing and remanding, found that the computer disks were "contraband" subject to seizure and confiscation by prison officials under Bureau of Prison regulations. The prison officials had the authority to seize and confiscate the contraband computer disks and the seizure of the disks did not interfere with the inmate's constitutional right of access to courts since his creation of the computer disks was unauthorized under regulations. (Federal Correctional Institute, Butner, North Carolina)

U.S. District Court
LAW BOOKS
LEGAL MATERIAL

Canell v. Bradshaw, 840 F.Supp. 1382 (D.Or. 1993). An inmate brought a Section 1983 action against county officials and the state Department of Corrections, arising from the inmate's temporary incarceration at the department's intake center which was operated by the county. The defendants moved to dismiss or for summary judgment. The district court found that the paging system, by which inmates temporarily incarcerated at the intake center would be provided only with cases for which the exact citation was provided,

did not give the inmate constitutionally adequate access to courts. However, the inmate failed to state a claim for denial of legal supplies in violation of his constitutional right of access to courts by virtue of an allegation that a medical condition prevented the inmate from drafting court documents long-hand using two-inch pencils that were provided. (Oregon Department of Corrections Intake Center)

U.S. Appeals Court
PRO SE LITIGATION

Casteel v. Pieschek, 3 F.3d 1050 (7th Cir. 1993). Inmates filed actions against county jail officials alleging the denial of their constitutional right to meaningful access to courts. The United States District Court entered judgments against the inmates and the inmates appealed. The court of appeals, reversing and remanding, found that the obligation of the county jail authorities to provide the inmates in their custody with some level of meaningful access to courts had been clearly established during the period of the inmates' stay in the county jail, for the purposes of determining whether the jail officials had qualified immunity from the suit. However, any need to provide more than regular access to the public defender's office had not been clearly established. A single instance of noncompliance with a court order to sign one's own pleadings and the failure to notify the court of an address change were insufficient to support a dismissal of one county jail inmate's pro se action for failure to prosecute the claim of denial of meaningful access to courts. (Brown County, Wisconsin and Clark County, Indiana)

U.S. Appeals Court
APPOINTED COUNSEL
IN FORMA PAUPERIS
PRIVILEGED CORRESPONDENCE

Castillo v. Cook County Mail Room Dept., 990 F.2d 304 (7th Cir. 1993). An inmate brought a civil rights claim alleging that the mail room at the Cook County Department of Corrections had opened three letters addressed to him that were labeled legal mail. The prisoner sought to file in forma pauperis. The U.S. District Court denied leave to file in forma pauperis, and dismissed the prisoner's complaint with prejudice; the prisoner appealed. The court of appeals found that the prisoner's in forma pauperis complaint against the mail room for opening letters addressed to him from the United States District Court and the Department of Justice marked with the warning "LEGAL MAIL--OPEN IN PRESENCE OF INMATE" was not frivolous. The incidents may have shown an ongoing activity, rather than merely an isolated incident of mishandled mail that was not a concern of constitutional magnitude. Upon remand, the district court was instructed to appoint counsel for the inmate. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
ACCESS TO COURT
LEGAL MATERIAL

Clayton v. Tansy, 26 F.3d 980 (10th Cir. 1993). A prisoner brought a Section 1983 action against the warden alleging denial of his right to court access. The U.S. District Court granted summary judgment for the warden and the prisoner appealed. The appeals court, affirming in part and remanding in part, found that the warden was not required to provide the prisoner with materials on law of another state, and the district court was instructed to address the prisoner's Section 1983 claim that New Mexico prison's use of an "exact cite" paging system denied the prisoner access to courts. (New Mexico Penitentiary)

U.S. Appeals Court
FRIVOLOUS SUITS
RETALIATION FOR LEGAL ACTION

Cooper v. Delo, 997 F.2d 376 (8th Cir. 1993). A prison inmate brought an action under Section 1983 against corrections officials alleging that they violated his constitutional rights by retaliating against him for filing lawsuits and assisting other inmates in filing lawsuits. The U.S. District Court dismissed the action and the inmate appealed. The appeals court, affirming the decision, found that the district court did not abuse its discretion by dismissing the in forma pauperis claim as frivolous on grounds that the claim was duplicative of a claim previously dismissed as frivolous under a statute providing for dismissal of frivolous or malicious actions filed in forma pauperis. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
APPOINTED ATTORNEY

Farmer v. Haas, 990 F.2d 319 (7th Cir. 1993). A federal prisoner sued prison officials, charging deliberate indifference to his need for medical and psychiatric treatment for a condition known as transsexualism (gender dysphoria). Before trial, the prisoner requested a lawyer's representation. The U.S. District Court denied the prisoner's motion to request a lawyer at the federal civil trial, and the prisoner appealed. The appeals court, affirming the decision, found that the federal district judge's decision was not unreasonable. At the time of the prisoner's request for an attorney, the prisoner had been litigating for some time, and the trial itself promised to be a straightforward swearing contest about whether the prisoner had in fact requested treatment. Furthermore, the court found that there is not a constitutional or statutory right to counsel in federal civil cases--only a statute that authorizes a federal district judge to request, but not to compel, a lawyer to represent an indigent civil litigant. (Wisconsin)

U.S. District Court
NOTARY SERVICE

Flowers v. Dalsheim, 826 F.Supp. 772 (S.D.N.Y. 1993). An inmate filed a civil rights action against a superintendent of a correctional facility and corrections officers, claiming denial of notary and medical services. The defendants filed a motion to dismiss. The district court found that the delay of three week days in providing notary services to an inmate did not rise to a level of constitutional deprivation when the inmate did not allege that an emergency existed or that his access to courts was in any way impaired. (Downstate Correctional Facility, New York)

U.S. Appeals Court
JAIL HOUSE LAWYERS
RETALIATION

Gibbs v. Hopkins, 10 F.3d 373 (6th Cir. 1993). An inmate who was a "jailhouse lawyer" filed a Section 1983 claim against prison officials alleging that they failed to release him from segregation following a 30-day detention for possession of contraband in retaliation for assistance he provided to other prisoners with their legal matters. The U.S. District Court found that the retaliation claims should be dismissed on the ground that there was no constitutionally protected right to assist another prisoner with legal matters. The inmate appealed. The appeals court, reversed in part, and remanded the case, finding that the prison officials' failure to give the inmate the first bed which became available outside of segregation after the expiration of his 30-day detention was relevant to the potential constitutional claim that officials retaliated against him by keeping him in segregation for rendering legal assistance to other prisoners. (Chippewa Correctional Facility, Kincheloe, Michigan)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

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 alawsuit 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. Appeals Court
INITIAL APPEARANCE

Hallstrom v. City of Garden City, 991 F.2d 1473 (9th Cir. 1993). An arrestee brought a Section 1983 action against a county and its officials. The U.S. District Court dismissed the action, and the arrestee appealed. The appeals court found that a four-day incarceration period between arrest and presentation to a magistrate violated the arrestee's right to prompt presentation, for the purposes of her Section 1983 action. The county made no showing of justification for the delay other than as a measure to force her to cooperate with booking procedures. The refusal to cooperate with booking procedures did not excuse the extended detention. The court noted that the county and its officials were not entitled to qualified immunity from either official or personal liability under Section 1983 for violating the arrestee's right to be taken before a magistrate promptly, as no objectively reasonable officer could consider a four-day incarceration to be brief, arraignment to be prompt, or the purpose of coercing compliance with booking procedures to be sufficiently exigent to justify the delay. (Ada County Jail, Idaho)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Hardiman v. Hartley, 842 F.Supp. 1128 (N.D. Ind. 1993). A former inmate brought a civil rights action against prison officials, claiming that they violated his constitutional rights by filing disciplinary charges against him in retaliation for his initiating a state court tort action. The district court found that evidence did not support the inmate's contention because the official in question was not a party to the state court action. In addition, the disciplinary charges were in fact based on conduct that violated disciplinary rules. (Indiana State Prison, Michigan City, Indiana)

U.S. District Court
POSTAGE
PRIVILEGED COMMUNICATION

Herrera v. Scully, 815 F.Supp. 713 (S.D.N.Y. 1993). An inmate sued prison officials under Section 1983 and New York law alleging the violation of his constitutional and state law rights in the handling of his mail that was allegedly delayed, lost, given to another inmate, or withheld. On the defendant's motion for summary judgment, the district court found that the prison officials did not act in an intentional and deliberate manner to deprive the inmate of his constitutional rights by preventing his legal mail from arriving at court in a timely manner due to insufficient funds in the inmate's account. The prison officials' behavior was consistent with Department of Correction's policies and procedures regarding processing of inmate mail. The prison official had offered to write to the court on the inmate's behalf explaining any untimeliness in the arrival of the inmate's reply affirmation. (Green Haven Correctional Facility, New York)

U.S. District Court
INDIGENT INMATES
POSTAGE

Hershberger v. Scaletta, 861 F.Supp. 1470 (N.D. Iowa 1993). Inmates sued prison officials, alleging that prison policies regarding legal postage for indigent inmates were unconstitutional. The district court found that, in accordance with the inmate's right of access to courts, the prison was required to provide each indigent inmate weekly with at least one free stamped envelope, or such other larger number of free stamped envelopes as was deemed appropriate by prison officials, for use for legal mail. (Iowa Men's Reformatory, Anamosa, Iowa)

U.S. Appeals Court
JAIL HOUSE LAWYERS
LEGAL ASSISTANCE

Hrbek v. Nix, 12 F.3d 777 (8th Cir. 1993) U.S. cert. denied 115 S.Ct. 313. An inmate brought a petition for writ of habeas corpus against a prison disciplinary committee when it discipline him based on only "some evidence" of his guilt. The U.S. District Court granted the writ, and the state appealed. The appeals court, vacating the writ, found that the disciplinary committee's decision that the inmate violated prison rules by

conspiring through the mail to circumvent prison regulations and by attempting to obtain money from other inmates by charging for legal services, which was supported by "some evidence," was not arbitrary and did not violate the inmate's right to due process. (Iowa State Penitentiary)

U.S. Appeals Court
COURT COSTS
FILING FEES

Johnson v. Atkins, 999 F.2d 99 (5th Cir. 1993). A prisoner brought a pro se civil rights action challenging the fee schedule for state district court. The U.S. District court entered a judgment against the prisoner, and he appealed. The court of appeals, affirming the decision, found that the fee schedule was constitutional. The court noted that requiring the pro se prisoner to prepay nonrefundable court fees did not interfere with the prisoner's right to meaningful access to courts, for the purposes of the prisoner's Section 1983 claim, despite his contention that the fees were too high and that they were unfair. The prisoner did not claim that he was indigent, and the record did not suggest that the defendant should have been required to pay costs. (Louisiana)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

Kindred v. Duckworth, 9 F.3d 638 (7th Cir. 1993). An inmate moved to hold in contempt prison officials who allegedly violated a consent decree by instituting a policy under which inmates were required to open all incoming legal mail in the presence of prison staff. The U.S. District Court denied the motion, and the inmate appealed. The appeals court, reversing and remanding, found that the policy violated the consent decree. The relative ease with which contraband could be smuggled into prison under the guise of confidential correspondence did not provide the prison with reasonable grounds to believe that physical contraband could be found in every piece of incoming mail. (Indiana Reformatory at Pendleton)

U.S. District Court
RESTRAINTS

King v. White, 839 F.Supp. 718 (C.D. Cal. 1993). After being convicted on retrial on rape and sodomy charges, the offender filed a writ of habeas corpus challenging security measures during his trial. The U.S. District Court found that any error in shackling the defendant during the trial was a harmless error. The defendant did not contend that the restraint impaired his mental faculties or that it was physically painful to him. There was no impediment in communicating with counsel since the defendant represented himself. The court took adequate steps to ensure that the restraint would not be seen by the jury, and the restraint would not have been seen by the jury except for the defendant's voluntary conduct in exposing the restraints to the jury. (California)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Klinger v. Nebraska Dept. of Correctional Services, 824 F.Supp. 1374 (D. Neb. 1993) reversed 31 F.3d 727. Female inmates at Nebraska's only women's prison brought a class action against the Nebraska Department of Correctional Services (DCS) and related parties asserting a claim for equal protection and access-to-court violations and various other claims. Following a trial on liability issues, the district court found that the female inmates' equal protection rights were violated by programs and services relating to pay, education and vocational training, law library facility, health and dental care, and recreational facilities and activities when compared with similar programs and services available at the men's penitentiary. In addition, discrimination in education and vocational training violated Title IX of the Education Amendments of 1972. Maintaining an inadequate law library and denying segregation and orientation inmates access to the law library or to legal aide violated the inmates' right of access to courts. On appeal, the court found that the women inmates were not similarly situated as men inmates, and therefore suffered no equal protection violation. (Neb. Center for Women, York, Nebraska)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Ladd v. Davies, 817 F.Supp. 81 (D.Kan. 1993). An inmate brought a Section 1983 action alleging that confiscation of two of three packages of state-issued T-shirts from his cell during a shakedown violated due process, the Eighth Amendment, and was in retaliation for his litigation. The district court found that the removal of the T-shirts did not violate due process and was not cruel and unusual punishment; institutional orders in effect at the time of the search did not require the issuance of a confiscation slip and the removal of clothing did not cause unnecessary and wanton infliction of pain or result in the deprivation of basic human needs. Furthermore, the confiscation was not a retaliatory act for his pursuit of a legal claim; the confiscation was consonant with the institutional policy of conducting random searches for contraband, the clothing removed was state property, and no disciplinary action was taken against the inmate. (Kansas Department of Corrections)

U.S. District Court
LEGAL MATERIALS
TRANSFER

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. Appeals Court
RESTRAINTS

Lemons v. Skidmore, 985 F.2d 354 (7th Cir. 1993). A prison inmate brought a civil rights action against corrections officers alleging use of excessive force. The verdict was directed for one defendant and a jury found for the remaining defendants following a trial. The plaintiff appealed. The appeals court, reversing and remanding, found that the magistrate judge abused his discretion by relying on the self-serving opinion of fellow penal officers of the defendants as to whether it was necessary that the plaintiff appear at the trial in restraints, and by not holding a hearing to determine what, if any, restraints were necessary, by failing to take steps to minimize prejudice, and by failing to give a curative instruction. (Pontiac Correctional Center, Illinois)

U.S. District Court
ACCESS TO ATTORNEY
TELEPHONE

Mann v. Reynolds, 828 F.Supp. 894 (W.D. Okl. 1993) reversed 46 F.3d 1055. Death-row inmates brought a classaction 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. However, the appeals court reversed the lower court dedision, finding a Sixth Amendment violtion. (Oklahoma State Penitentiary, McAlester, Oklahoma)

U.S. District Court
LAW LIBRARY

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

U.S. Appeals Court
ACCESS TO ATTORNEY
PRIVILEGED CORRESPON-DENCE

McMaster v. Pung, 984 F.2d 948 (8th Cir. 1993), affirmed, 984 F.2d 950. An inmate brought a civil rights action against department of corrections officials, alleging violation of his constitutional rights to due process, assistance of counsel, and access to courts. The U.S. District Court granted the officials' motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's due process rights were not violated by the corrections officials' refusal to allow his wife to testify in person at a disciplinary hearing. Because corrections officers had reason to believe that the defendant was an escape risk and that the presence of his wife inside the prison posed a security risk, the wife's testimony was submitted by an affidavit. The court also found that the inmate's Sixth Amendment right to effective assistance of counsel was not violated by a ban on contact visits with his female attorney because the defendant was being disciplined for his intimate contact with that attorney. The inmate was allowed telephonic contact and consultation through the mail with that attorney while he was not in administrative segregation, and the inmate was also represented by a male attorney whose contact visits were not restricted. The correctional officers were justified in inspecting the inmate's legal mail to and from his female attorney in his presence, where the attorney was a threat to security and the orderly administration of the prison. The court found that the inmate failed to establish that his right of access to courts was violated by a cumulative effect of a ban on contact visits with his female attorney, mail restrictions, and restrictions on his telephone privileges while in administrative segregation. The prisoner made no showing that he was denied access to courts or that he was prejudiced by the prison officials' actions. (Minnesota Correctional Facility, Oak Park Heights, Minnesota)

U.S. District Court
LAW LIBRARY
PHOTOCOPYING

Oswald v. Graves, 819 F.Supp. 680 (E.D.Mich. 1993). An inmate brought a Section 1983 action against a law librarian, who moved for summary judgment. The district court found that the prison librarian's one-time refusal to photocopy the inmate's legal forms for

free and one-time removal of the inmate's name from the library call-out list did not deny the inmate his right of access to courts absent a showing that such failure prevented the inmate from meeting deadlines, otherwise prejudiced him in any pending litigation, or impeded his access to courts. In addition, the inmate had failed to exhaust administrative remedies as he had filed a requisite grievance, but had failed to appear for a scheduled grievance interview. The prison librarian was entitled to qualified immunity from Section 1983 liability as the inmate had no clearly established statutory or constitutional right to free photocopying or a specific amount of library time. (Cotton Regional Correctional Facility, Jackson, Michigan)

U.S. Appeals Court
LAW BOOKS
LEGAL MATERIAL

Petrick v. Maynard, 11 F.3d 991 (10th Cir. 1993). An inmate filed a pro se Section 1983 action alleging that a state prison's inability to obtain specified legal materials precluded him from attacking prior convictions in foreign states. The U.S. District Court granted summary judgment in favor of the state, and the inmate appealed. The appeals court, reversing and remanding, found that the state denied the inmate meaningful access to courts by failing to provide him with foreign state legal materials which the inmate sought in order to attack prior convictions used to enhance his sentence. The inmate sufficiently described the materials needed with the exception of one request which was too broad, the inmate adequately alleged the reason why he sought the materials. (Oklahoma State Penitentiary)

U.S. District Court
DISABILITY
LEGAL MATERIAL

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 prisoner failed to establish that his blindness and lack of access to legal materials printed in Braille effectively denied him a right of access to courts, notwithstanding that his blindness effectively denied him access to the prison law library, because the prisoner failed to allege that there was no legal assistance program for prisoners in the prison. (New York)

U.S. District Court
LAW LIBRARY
PHOTOCOPYING

Sammons v. Allenbrand, 817 F.Supp. 94 (D.Kan. 1993). An inmate brought a Section 1983 action alleging that his right of access to the courts was violated; the district court ruled against the inmate. The inmate was represented by counsel and he extensively used the law library at the facility pursuant to almost daily requests for library time. The fact that the inmate was charged for copying legal materials that were not available from the law library at the county detention facility where he was confined did not deprive the inmate of his right of access to the courts. The inmate made no claim that he was denied copies because he could not pay costs and alleged no injury that resulted from the imposed costs. (Johnson County Adult Detention Center, Johnson County, Kansas)

U.S. Appeals Court
LAW LIBRARY

Strickler v. Waters, 989 F.2d 1375 (4th Cir. 1993), cert. denied, 114 S.Ct. 393. An inmate in a city jail brought a suit against the Commonwealth of Virginia, the city, the city sheriff, and the Department of Corrections for their alleged violation of his constitutional rights concerning his conditions of confinement. The U.S. District Court granted the defendants' motions for summary judgment, and the inmate appealed. The court of appeals found the jail library to which the inmate had access was not so inadequate as to deprive him of his constitutional right of access to courts. Although the library had no case reporters, it was stocked with sets of state and federal codes, as well as with Corpus Juris Secundum, and the inmate had access to other materials upon request through the library's call system. Also, the officials at the city jail did not deprive the inmate of his constitutional right of access to courts by providing him with access to the jail library only one hour each week. The inmate could receive legal materials from the library for use in his cell during periods when he was unable to directly gain access to the library. (Portsmouth City Jail, Virginia)

U.S. District Court
VIDEO
COMMUNICATION

U.S. v. Baker, 836 F.Supp. 1237 (E.D.N.C. 1993). An inmate sought review of a civil commitment hearing because it was conducted as a video teleconference. The district court found that the inmate's due process rights were not violated because the civil commitment hearing was conducted via teleconferencing. According to the court, the use of video conference technology did not increase the risk of an erroneous result, and the government had a substantial interest in allaying travel costs and disruption, and assuring a higher level of safety for inmates and other participants. The court noted that, in considering whether an inmate's due process rights were violated by a civil commitment hearing conducted via teleconferencing, the court would proceed to review the nature of liberty interest at stake, the government's interest in using the challenged procedures, and the risk of erroneous deprivation of that interest when the hearing is conducted by means of video conference technology. The court also found that the hearing did not violate a statute requiring that a person whose mental condition is subject of such a hearing shall be allowed an opportunity to testify and to confront and cross-examine witnesses. The statute does not mention physical presence, but says only that a person be given an opportunity to testify and to otherwise take part in the hearing. (Federal Correctional Institution, Butner, North Carolina)

U.S. District Court
IN FORMA PAUPERIS
LEGAL MATERIAL

U.S. v. Groce, 838 F.Supp. 411 (E.D.Wis. 1993). A prisoner petitioned for leave to proceed in forma pauperis in obtaining trial transcripts regarding a criminal proceeding. The district court found that following the completion of a direct appeal, the prisoner was not entitled to receive free trial transcripts either on demand or because he intended to use such transcripts in future postconviction proceedings. The prisoner was entitled to review the court file, including transcripts, if he indicated to the court that he had attempted without success to obtain copies from the trial and appellate counsel, and described the purpose for which he sought the transcripts. (Federal Correctional Institution, Oxford Wisconsin)

U.S. Appeals Court
FRIVOLOUS SUITS

White v. Gregory, 1 F.3d 267 (4th Cir. 1993), cert. denied, 114 S.Ct. 931. A state prisoner brought a pro se Section 1983 action, alleging an Eighth Amendment violation. The U.S. District Court dismissed the complaint as frivolous, and appeal was taken. The appeals court, affirming the decision, found that the inmate's allegation that he was receiving only two meals a day on weekends and holidays, while admitting that he received three meals a day at other times, was insufficient to allege an Eighth Amendment violation absent an allegation of deleterious physical or mental effects from the meal schedule. (Pruntytown Correctional Center, West Virginia)

U.S. Appeals Court
ACCESS TO COUNSEL
APPOINTED ATTORNEY

Williams v. Carter, 10 F.3d 563 (8th Cir. 1993). A prisoner brought a Section 1983 action claiming jail conditions constituted cruel and unusual punishment. After denying the prisoner's request for appointed counsel, and subpoenaing witnesses from one of the prisoner's two witness lists, the U.S. District Court found that the conditions did not rise to a level of cruel and unusual punishment. The prisoner appealed. The court of appeals, reversing and remanding, found that the magistrate judge's failure to appoint counsel for the prisoner and to recognize the first witness list filed by the prisoner, constituted a clear error of judgment, and thus was an abuse of discretion. The prisoner's evident confusion with respect to his witness lists made it clear how difficult it was for him to proceed without counsel. The prisoner submitted the first witness list before he received the court's required witness list form, and listed additional witnesses on the court's form. The magistrate judge should have examined whether any of the persons listed were likely to provide relevant and material evidence. (Poinsett County Jail, Arkansas)

1994

U.S. Appeals Court
LAW LIBRARY

Allen v. City & County of Honolulu, 39 F.3d 936 (9th Cir. 1994). An inmate who was allegedly forced to choose between exercising his right to law library access and his right to outdoor exercise brought an action against a prison official seeking damages under Section 1983. The U.S. District Court denied the official's motion for summary judgment on a claim of qualified immunity and the official appealed. The appeals court, affirming the decision found that although exceptional circumstances sometimes may necessitate that an inmate make difficult choices between using the law library and pursuing other activities, the inmate cannot be forced to sacrifice one constitutionally protected right solely because another is respected. (Halawa Medium Security Facility, Honolulu, Hawaii)

U.S. Appeals Court
PHOTOCOPYING
WRITING MATERIAL

Allen v. Sakai, 48 F.3d 1082 (9th Cir. 1994). A prisoner filed a civil rights action under Section 1983 against prison officials. The prison officials moved for summary judgment under the theory of qualified immunity; this was denied by the U.S. District Court and the prison officials appealed. The appeals court found that the prison officials were not entitled to summary judgment on their claim of qualified immunity since the inmate made an adequate showing of actual injury to court access so as to show that the prison officials' conduct in denying the inmate photocopying services and use of a pen, if true, violated clearly established constitutional rights. The inmate was injured when his petition to court was refused since the inmate submitted only a single copy, regardless of the fact that the inmate eventually had his petition duplicated and filed with the court. (Halawa High Security Facility, Hawaii)

U.S. District Court
STATUTE OF LIMITATIONS

Anthony v. County of Sacramento Sheriff's Dept., 845 F.Supp. 1396 (E.D. Cal. 1994). A black female deputy sheriff brought a Section 1983 action against a county, county sheriff's department, supervisors, co-workers, and a civilian jail employee, alleging sexual and racial harassment and retaliation for her defense of black inmate rights. The defendants moved to dismiss. The district court found that the complaint alleged a continuing violation extending into California personal injury action one-year limitations period and, thus, the complaint was not time barred. (Sacramento County Sheriff's Department, California)

U.S. Appeals Court
ACCESS TO COUNSEL

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
FRIVOLOUS SUITS

Beauchamp v. Sullivan, 21 F.3d 789 (7th Cir. 1994). An inmate brought an action seeking damages against state prison officials claiming that the prison's policy regulating smoking by prisoners violated his constitutional rights. The U.S. District Court dismissed the suit, and the inmate appealed. The appeals court, affirming the decision, found that the inmate failed to show that he had a standing to sue, as he did not allege that he was a smoker. The action was frivolous. (Wisconsin Department of Corrections)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Bieros v. Nicola, 857 F.Supp. 445 (E.D.Pa. 1994). A prisoner brought a pro se action seeking a temporary restraining order to prohibit retaliatory action by prison officials. The district court denied the motion. The court found that the prisoner was not entitled to an order prohibiting prison officials from retaliating against him for having brought a civil rights action, by threatening to move him to another prison and not allowing him to take materials with him. The threat did not have the degree of immediacy required to grant a temporary restraining order, as it had been made ten months before the petition was filed and there were no particulars as to threats and no indication that a transfer would be undertaken. The court refused to grant a restraining order to prevent officials from doing something in the future that was entirely speculative. (State Correctional Institution, Graterford, Pennsylvania)

U.S. District Court
PRIVILEGED CORRESPONDENCE

Brown v. Quigley, 853 F.Supp. 325 (N.D. Cal. 1994). An inmate in a state prison filed a pro se Section 1983 complaint against a secret service agent, arising out of the agent's alleged order requiring the state medical facility and state prison to keep the inmate's legal mail. The district court found that the inmate failed to state a claim under Section 1983, but rather stated a claim under the Bivens doctrine for constitutional torts committed by federal employees, where the prisoner named a federal secret service agent as the defendant responsible for his alleged constitutional injury. The inmate's allegations that the secret service agent interviewed him at the state medical facility regarding a letter the inmate had written regarding a plot to assassinate the president, and that the agent ordered the medical facility and the state prison to keep all of the inmate's legal mail, stated a cognizable claim that his First Amendment rights had been violated as a result of censorship of his mail without legitimate government interest. However, absent facts indicating that the prisoner had suffered "actual injury" amounting to denial of access to courts by virtue of orders to the medical facility and state prison, the prisoner failed to state a due process claim against the agent relating to inspection of the mail. (California Medical Facility)

U.S. District Court
CIVIL SUIT
LEGAL ASSISTANCE

Carper v. DeLand, 851 F.Supp. 1506 (D.Utah 1994). Utah inmates brought a class action suit against Utah Department of Corrections (UDC) officials alleging failure to provide inmates with constitutionally adequate access to courts. On cross-motions for summary judgment, the district court found that the obligation of the UDC to provide legal assistance to inmates was not limited to preparation of civil rights complaints regarding conditions of confinement and petitions for writs of habeas corpus. Budgetary considerations did not justify a prison regulation that infringed upon inmates' constitutional right of access to court. In addition, in light of the fundamental importance of family relationships in our society, the rights of state inmates' in Utah to access courts encompassed the right to pursue or defend adjustments of these relationships. Therefore, the UDC has to provide legal assistance in preparation and filing of initial papers to oppose termination of inmates' parental rights, including request for appointment of counsel, and preparing petitions for divorce or preparing the initial response in divorce proceedings. The court noted that prison officials' obligation to provide assistance in these cases would not extend to matters involving enforcement or contempt proceedings or modification proceedings in divorce cases. (Utah State Prison)

U.S. Appeals Court
FRIVOLOUS SUITS

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. Appeals Court
RETALIATION FOR LEGAL ACTION

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
ACCESS TO COURT
LAW LIBRARY
LEGAL MATERIALS
POSTAGE

Eason v. Nicholas, 847 F.Supp. 109 (C.D. Ill. 1994). A state prisoner brought a Section 1983 action against state correctional center officials, alleging denial of access to courts. The parties cross-moved for summary judgment. The district court found that the officials did not impermissibly infringe on the prisoner's rights of access to courts because the prisoner had adequate access to the law library and was provided ample legal supplies and resources. Officials simply required the prisoner to complete forms authorizing later reimbursement to the state for the cost of posting the prisoner's outgoing mail. Even assuming that officials attempted to interfere with the prisoner's access to courts, the prisoner failed to show prejudice in light of court access and the prisoner's prolific litigation. (Western Illinois Correctional Center)

U.S. District Court
LEGAL ASSISTANCE

Glover v. Johnson, 850 F.Supp. 592 (E.D. Mich. 1994). Women inmates brought an action challenging decisions by the Michigan Department of Corrections to reduce funding to Prison Legal Services (PLS) and to exclude assistance in parental rights matters. The district court found that women inmates' right of meaningful access to courts entitled inmates to legal assistance in parental rights matters in order to guarantee due process, even though prisons had adequate law libraries and some inmate paralegals. There could be no meaningful access without assistance of an attorney, and parents have a strong interest in the accuracy and justice of a decision terminating parental rights. (Michigan Department of Corrections)

U.S. Appeals Court
ACCESS TO COURT

Hamm v. Groose, 15 F.3d 110 (8th Cir. 1994). Prison law clerks, jailhouse lawyers, and library workers brought a civil rights action alleging denial of access to courts on their behalf and on behalf of other inmates. The U.S. District Court entered a judgment against the inmates and they appealed. The appeals court, affirming the decision, found that the inmates lacked standing to bring denial-of-access claims on behalf of others without asserting complete denial of access, or actual injury or prejudice. (Jefferson City Correctional Center, Missouri)

U.S. District Court
PRO SE LITIGATION
STATUTE OF LIMITATIONS

Higgenbottom v. McManus, 840 F.Supp. 454 (W.D.Ky. 1994). A state prisoner brought a Section 1983 action against a city and a police officer, alleging excessive force during his arrest. The defendants moved to dismiss. The district court found that the inmate's civil rights complaint would be deemed timely under the judicially created "mailbox rule" for prisoners proceeding pro se, even though no evidence established the precise date on which the inmate mailed his complaint. The complaint had entered the prison mail system before the governing statute of limitations expired. The "mailbox rule" extended no special privilege to the inmate, but merely considered his inability to personally deliver his complaint or deposit it at a United States Post Office. (Eastern Kentucky Correctional Complex)

U.S. District Court
ACCESS TO ATTORNEY
APPOINTED ATTORNEY
RIGHT TO COUNSEL

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. The first thing the district court must consider in determining whether to appoint counsel for an indigent plaintiff is whether the claim has some merit in fact and law. If the claim is of "arguable merit," other factors regarding the plaintiff's need for appointment of counsel shall be considered. These include the plaintiff's ability to present his case, including education, literacy, work and litigation experience, and the amount of confinement disabling the plaintiff's access to information resources. In addition, the difficulty of the legal issue, the complexity of the factual investigation and discovery required, and the degree to which the case is likely to turn on credibility is weighted. According to the court, the appointment of counsel for an indigent plaintiff should not take place unless it is absolutely necessary, considering the reality that resources, both human and monetary, are scarce. In this case, the inmate appeared to be literate and educated, the legal issues were not very complex, and the inmate could use the law library upon written request. (Pennsylvania)

U.S. Appeals Court
FRIVOLOUS SUITS

Holloway v. Hornsby, 23 F.3d 944 (5th Cir. 1994). An inmate filed a pro se in forma pauperis action alleging denial of access to prison grievance procedures and threats and taunts for filing prior grievances. The U.S. District Court dismissed the complaint as frivolous, and the inmate appealed. The appeals court found that the inmate's action was frivolous and subject to dismissal. In addition, further frivolous filings by the inmate would result in an imposition of the full panoply of sanctions available to court. (Washington Correctional Institute)

U.S. Appeals Court
LEGAL MATERIALS

Housley v. Dodson, 41 F.3d 597 (10th Cir. 1994). An inmate in a county jail brought a civil rights suit against various public officials. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the inmate's allegation that he was denied all access to any legal resources during his six-month confinement in the county jail was sufficient to state a claim against jail officials based on denial of right of access to courts. (Custer County Jail, Oklahoma)

U.S. District Court
LEGAL MATERIAL
TYPEWRITER

Howard v. Leonardo, 845 F.Supp. 943 (N.D.N.Y. 1994). An inmate brought a civil rights action claiming that he was denied his right of access to courts when his typewriter was confiscated for a period of sixteen days. On the defendants' motion for summary judgment the district court found that the confiscation of the typewriter, which contained the inmate's habeas corpus reply brief in its memory, did not violate the inmate's right of access to courts because the inmate was able to contact his attorney and request that the material be prepared and submitted. (Great Meadow Correctional Facility, New York)

U.S. District Court
RETALIATION FOR
LEGAL ACTION

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 of retaliation against a prison official. The prisoner alleged that the official stomped on the prisoner's bare feet with police boots in response to the prisoner's assertion that she would be filing a complaint against the official in federal district court. (Pacific Grove Police Department and Monterey County Sheriff's Department, California)

U.S. District Court
IN FORMA
PAUPERIS
WRITING
MATERIAL

Krisch v. Smith, 853 F.Supp. 301 (E.D.Wis. 1994). Inmates brought a Section 1983 action against prison officials, alleging that the officials did not provide suitable writing pens for inmates. On the inmates' motions to proceed in forma pauperis and to obtain a temporary restraining order (TRO), the district court found that the inmates' financial status qualified them to proceed in forma pauperis. In addition, the inmates sufficiently stated an "access to courts" claim to require a response to the TRO motion by the defendant officials. Prison inmates' allegations that prison officials did not provide suitable pens for inmates, in light of the inmates' previous hand injuries and involvement in litigation which necessitated the writing of court documents, arguably stated a Section 1983 claim that officials violated the inmates' constitutional right to meaningful access to courts. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
ACCESS TO
COUNSEL
LAW LIBRARY

Lloyd v. Corrections Corp. of Amer., 855 F.Supp. 221 (W.D. Tenn. 1994). An inmate brought a Section 1983 action against officials of a privately operated penal facility. The district court found that the inmate's right of access to the courts was adequately protected where he was represented by counsel in his criminal case, even if he was denied access to a law library. (Federal Correctional Institution, Florence, Colorado)

U.S. Appeals Court
RIGHT TO COUNSEL

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. District Court
RETALIATION FOR
LEGAL ACTION

Lucien v. Peters, 840 F.Supp. 591 (N.D.Ill. 1994). A prisoner brought an action against prison officials for alleged violation of his constitutional rights. On the prison officials' motion to dismiss, the district court found that the prisoner stated a claim against prison officials under Section 1983 for due process violations based upon the officials' alleged retaliation against the prisoner for having filed an earlier civil rights suit. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
ATTORNEY FEE

Maul v. Constan, 23 F.3d 143 (7th Cir. 1994). After nominal damages were awarded to an inmate in a civil rights action, corrections officials filed a motion for relief from an attorney fee award. The U.S. District Court denied the motion and the corrections officials appealed. The appeals court, reversing and remanding, found that no attorney fees were warranted. The court noted that the inmate received only nominal damages from his Section 1983 suit for denial of procedural due process in the forced administration of psychotropic medication, and should not have been awarded attorney fees under Section 1988. Although the inmate prevailed on a significant legal issue, the difference between the judgment sought and obtained was great and the public purpose of the litigation was minimal. In addition, the significance of the legal issue on which the plaintiff prevailed is the least important of three factors to be considered in determining whether the plaintiff,

who had obtained only nominal damages, is nonetheless entitled to receive attorney fees in the civil rights action. (Indiana's Westville Correctional Center)

U.S. Appeals Court
INDIGENT INMATES
COURT COSTS

McGill v. Faulkner, 18 F.3d 456 (7th Cir. 1994) U.S. cert. denied 115 S.Ct. 233. A state prisoner who brought an unsuccessful civil rights claim was ordered to pay costs, despite his claims of indigency, by the U.S. District Court. The prisoner appealed. The appeals court, affirming the decision, found that the prisoner waived the right to challenge the order for payment of costs by failing to object to the bill of costs. The state prisoner's unsupported allegation of indigency was not the showing of indigency needed to overcome the presumption that the costs from the unsuccessful suit would be awarded against the prisoner. No documentary support was submitted to establish indigency and the status as a state prisoner did not per se establish indigency. Awarding costs against the prisoner was not an abuse of discretion, even if the prisoner was indigent. The award of costs served a valuable purpose of discouraging unmeritorious claims and treated unsuccessful litigants alike rather than having an improper chilling effect on prisoner civil rights litigation. (Indiana State Prison)

U.S. District Court
ACCESS TO
ATTORNEY

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. Appeals Court
WITNESS FEES

Moran v. United States, 18 F.3d 412 (7th Cir. 1994). A prisoner transferred from federal prison to a county jail where he remained as a potential witness in a federal case brought an action challenging the constitutionality of a statute barring prisoner witnesses from recovering a fee or allowances to which other witnesses in federal cases are entitled. The U.S. District Court entered judgment against the prisoner and he appealed. The court of appeals, affirming the decision, found that the statute did not create an irrational classification so as to violate the due process clause of the Fifth Amendment. (Wisconsin)

U.S. Appeals Court
FRIVOLOUS SUITS

Murphy v. Collins, 26 F.3d 541 (5th Cir. 1994). An inmate brought an in forma pauperis civil rights action for damages against various prison officials involved in the confiscation of his property and other prison incidents and the disciplinary proceedings that followed. The U.S. District Court dismissed the complaint as frivolous and the inmate appealed. The appeals court found that a monetary sanction and a sanction against filing future civil rights suits without prior consent of a district or magistrate judge could be imposed against the inmate upon dismissal of his in forma pauperis civil rights action as frivolous. He had already filed 15 civil rights complaints to date, most of which had been dismissed for failure to prosecute or as frivolous. (Texas Department of Criminal Justice)

U.S. Appeals Court
COURT COSTS
FILING FEES

Nickens v. Melton, 38 F.3d 183 (5th Cir. 1994). An indigent prisoner brought a Section 1983 action alleging that a prison guard had taken his property without due process of law. The U.S. District Court dismissed the action as frivolous and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner had an adequate postdeprivation remedy in Mississippi despite the fact that Mississippi did not allow for in forma pauperis appeals, and the prisoner was not denied a right to procedural due process. Under Mississippi law, the prisoner could have commenced a civil conversion action in forma pauperis against the prison guard. In addition, a Mississippi rule requiring prepayment of the cost for appeal in civil cases was rationally related to a legitimate government interest of offsetting expenses associated with operating an appellate court system and, thus, the rule did not violate the equal protection clause. (Parchman Penitentiary, Mississippi)

U.S. District Court
LEGAL MATERIALS

Partee v. Cook County Sheriff's Office, 863 F.Supp. 778 (N.D. Ill. 1994). A prisoner brought a civil rights action. The district court found that authorities did not violate the prisoner's right to have meaningful access to court by briefly denying him access to certain court papers. The prisoner had access to an attorney through most of the proceedings in question, and the attorney had instituted proceedings to have the materials returned to him. (Cook County Sheriff's Office, Illinois)

U.S. District Court
LAW LIBRARY

Pippins v. Adams County Jail, 851 F.Supp. 1228 (C.D. Ill. 1994). A pretrial detainee brought a civil rights action against a jail and a jail administrator for violating his constitutional rights. The district court found that the detainee was not denied access to court based on the jail's lack of a law library, where he was represented by counsel during his stay at the jail and he was able to cite leading cases on jail standards during his deposition. (Adams County Jail, Illinois)

U.S. District Court
FRIVOLOUS SUITS
IN FORMA
PAUPERIS

Prophete v. Gilless, 869 F.Supp. 537 (W.D. Tenn. 1994). A county jail inmate brought a civil rights action and the district court dismissed the complaint and certified that any appeal would not be taken in good faith. Within the statute providing that appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith, the good faith standard is an objective one and appeal is not taken in good faith if the issue presented is frivolous. It would be inconsistent for the district court to determine that a complaint is frivolous yet had sufficient merit to support appeal in forma pauperis. (Shelby County Jail, Tennessee)

U.S. District Court
LEGAL MATERIALS

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 the denial of access to legal materials. The district court found that the prison inmate failed to establish that he was denied access to courts by deprivation of legal materials, and he failed to establish that his prior appeal was dismissed due to the limitations on his access to legal materials. (Kansas Department of Corrections)

U.S. Appeals Court
RETALIATION FOR
LEGAL ACTION

Shabazz v. Askins, 14 F.3d 533 (10th Cir. 1994). A prison inmate brought a civil rights suit against members of the Oklahoma Pardon and Parole Board. The U.S. District Court granted a defense motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the prison inmate failed to present any evidence that members of the Board acted in a retaliatory manner against him in failing to recommend parole, after he had previously brought lawsuits against prison officials. Evidence of retaliation was the inmate's claim that the Board members failed to address him by his "Nubian, Islamic Hebrew" name and that the Board granted parole to other similarly situated inmates appearing at the same hearing. (Lexington Correctional Center, Oklahoma)

U.S. Appeals Court
TYPEWRITER

Taylor v. Coughlin, 29 F.3d 39 (2nd Cir. 1994). A prison inmate brought a civil rights action against state prison officials for their alleged violation of his constitutional rights. The U.S. District Court dismissed the inmate's complaint and the inmate appealed. The appeals court, affirming the decision, found that the inmate had no constitutional right to a typewriter with a specific memory capacity as an implement of the constitutional right of access to courts. A prison directive that precluded the inmate from possessing a typewriter with a memory capacity in excess of 5,000 bytes did not unconstitutionally interfere with his right of access to courts. (Cayuga Correctional Facility, New York)

U.S. Appeals Court
LAW LIBRARY

Vandelft v. Moses, 31 F.3d 794 (9th Cir. 1994). A prisoner brought a Section 1983 action against state correction authorities alleging a violation of his Fourteenth Amendment right of access to courts. The U.S. District Court granted the officials' motion for summary judgment and the prisoner appealed. The appeals court, affirming the decision, found that access to a legal library was not a "core" requirement under the Fourteenth Amendment, and the prisoner was consequently required to show that the inadequate access caused him actual injury. The prisoner did not make a necessary showing where his first request for legal materials after placement in segregation was made after the time limit for filing of papers on one claim had expired, and the period of segregation of 57 days did not significantly affect the defendant's right to prepare for the other claim, on which he had 365 days available. (Washington State Prison, Shelton, Washington)

U.S. District Court
JAIL HOUSE
LAWYERS
RETALIATION FOR
LEGAL ACTION

Wiideman v. Angelone, 848 F.Supp. 136 (D.Nev. 1994). An inmate brought a civil rights action against prison officials, alleging that they had retaliated against him for assisting other inmates with litigation. On the defendants' motion for summary judgment, the district court found that the inmate abused his First Amendment right to assist other inmates with litigation by committing perjury and forgery and offering false evidence in his own litigation and litigation in which he was assisting other inmates. The actions of prison officials in returning him to prison from a preferred, lower-custody institution, taking his typewriter from him, and forbidding him from assisting other inmates were justified by that abuse. (Northern Nevada Correctional Center)

U.S. District Court
ACCESS TO
COUNSEL
LAW LIBRARY
TELEPHONE

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 pretrial detainee, who was housed in a restricted housing unit, did not suffer a violation of his federal civil rights based on the fact that he was denied physical access to the prison library and was not offered paralegal assistance. The detainee could request and receive legal materials from the prison law library, he could purchase material from appropriate vendors, he was represented by appointed counsel during his entire detention, and he did not allege his legal efforts were actually hampered with regard to any of his pending lawsuits or with regard to the lawsuits he intended to initiate. In addition, the detainee's civil rights were not violated by his alleged lack of private access to a telephone for legal phone calls, as calls were made from his cell rather than from an enclosed room. The inmate was single-celled, and the mere allegation that prison guards had the opportunity to listen to his conversations was insufficient to show a violation of his right of access to courts. (State Correctional Institution, Dallas, Pennsylvania)

U.S. District Court
FRIVOLOUS SUITS

Abdul-Akbar v. Department of Corrections, 910 F.Supp. 986 (D.Del. 1995). A prisoner brought a series of pro se civil rights actions against prison officials, each accompanied by a petition for leave to proceed in forma pauperis. After treating all of the submissions as a single complaint, the district court held that all of the prisoner's claims of constitutional violations would be dismissed under the federal in forma pauperis statute as frivolous, and the prisoner was enjoined from filing further federal civil rights actions without first obtaining permission from the court. (Sussex Correctional Institution, Delaware)

U.S. District Court
FRIVOLOUS SUITS

Anderson v. D.C. Public Defender Service, 881 F.Supp. 663 (D.D.C. 1995). An injunction to prevent a prisoner from filing additional complaints without permission of the court was reversed on appeal due to lack of a hearing. On remand, the district court found that an injunction was appropriate in light of the numerous frivolous complaints that the defendant had previously filed. (District of Columbia)

U.S. District Court
PRIVILEGED CORRESPONDENCE

Bagguley v. Barr, 893 F.Supp. 967 (D.Kan. 1995). Two prisoners challenged prison officials alleging improper opening of three letters containing legal material. The district court entered judgment for the defendants, finding that the fact that prison officials may have opened three envelopes which contained legal mail did not rise to the level of a constitutional violation where the inmates had each received approximately 100 pieces of mail over a period of 15 months. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. District Court
TRANSFER
LEGAL MATERIAL

Banks v. Sheahan, 914 F.Supp. 231 (N.D.Ill. 1995). A state prisoner sued a sheriff and county jail director alleging deprivation of his constitutional right of access to courts while he was transferred from a county jail to a state prison. The prisoner claimed he informed the defendants that he had not been permitted to take his legal papers when he was transferred and requested their assistance, but they failed to take any action. The court ruled that the prisoner could bring suit based on an access claim as it related to his criminal case, even though he had not succeeded in overturning his convictions, to the extent he could show he was denied access that would otherwise have resulted in his conviction being overturned. The court denied qualified immunity for the defendants because an inmate's right of access to court was clearly established at the time. (Cook County Jail, Illinois)

U.S. District Court
LEGAL ASSISTANCE

Bennett v. Duckworth, 909 F.Supp. 1169 (N.D.Ind. 1995). An inmate submitted a habeas corpus petition challenging his state criminal conviction. The district court denied the petition, finding that the inmate was not denied access to courts under Bounds where he failed to show how prison officials failed to assist him in perfecting his defense or appeal and did not show any detriment resulting from the actions of prison officials, especially where he was assisted by court-appointed counsel at all relevant times. (Indiana Reformatory)

U.S. District Court
COURT COSTS

Berryman v. Epp, 884 F.Supp. 242 (E.D. Mich. 1995). On a motion to tax costs in a prisoner's civil rights action, the district court found that the prisoner failed to meet his burden to prove that he was unable to pay costs incurred by the defendant, despite his assertion without documentary support that he was unable to pay an award because he did not have a prison job and because he needed the amounts of money deposited in his prison account throughout the year. The court ordered that the present award of costs be removed from any prison account balance over $50 and that, if the amount withdrawn would cause the balance to fall below $50, no more than 20 percent of the account balance would be withdrawn in any one month until the award of $49.40 is reached. (Michigan Department of Corrections)

U.S. District Court
ACCESS TO COUNSEL
TELEPHONE

Beyah v. Putman, 885 F.Supp. 371 (N.D.N.Y. 1995). A pretrial detainee sued prison guards and a nurse alleging violation of his Fourteenth Amendment due process rights to a disciplinary hearing, and denial of access to court and counsel by restricting his telephone privileges. The district court held that prison officials can restrict inmates' access to counsel by telephone as long as inmates have some other avenue of access to legal counsel; the detainee conceded that he was allowed to call his legal counsel and that officials only restricted his personal calls. The court held that prison officials must give inmates at least 24 hours to prepare for disciplinary hearings before they can be deprived of good time or placed in solitary confinement. The court concluded that if the detainee received a sentence greater than the loss of privilege during a disciplinary proceeding, he raised a triable issue of fact as to whether his due process rights were violated based on the inadequacy of notice. (Onondaga County Jail, New York)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

Bieregu v. Reno, 59 F.3d 1445 (3rd Cir. 1995). An inmate brought an action against prison officials alleging violation of his constitutional rights by repeatedly opening his properly marked incoming legal mail outside of his presence. The district court entered summary judgment for the officials and the appeals court affirmed in part and reversed in part. The appeals court held that the prison's pattern and practice of opening court mail outside his presence impinges on his constitutional rights to free speech and court access, and that no showing of an actual injury is necessary to establish that his rights have been infringed. The court noted that a single, inadvertent opening of properly marked legal mail outside the prisoner's presence would not infringe on the prisoner's rights absent a showing of actual injury. The court found that the officials were not entitled to qualified immunity. The court also held that prison officials violate an inmate's First Amendment rights when they refuse to deliver incoming personal mail simply because it is written in a language other than English, or when they refuse to deliver mail that allegedly could be emotionally disturbing to an inmate absent a psychiatric determination that the mail would indeed be upsetting. (Federal Correctional Institution, Fairton, New Jersey)

U.S. District Court
FILING FEES
PRIVILEGED CORRESPONDENCE

Black v. Callahan, 876 F.Supp. 131 (N.D.Tex. 1995). A pro se prisoner for whom the filing fee was waived brought a federal civil rights action against a sheriff and a captain who worked at the facility where the prisoner was kept, alleging that actions of the sheriff and the captain in tampering with his mail violated his First Amendment right to judicial access. The district court found that the actions of the sheriff and the captain did not violate the prisoner's rights where there was no evidence the sheriff or the captain had tampered with the mail and the prisoner had brought federal civil rights actions in the past. In addition, the prison warden was ordered to make payment to the court of the filing fee out of the prison account of the prisoner. Also, the clerk of court was directed not to accept any further filings from the prisoner unless the filing fee was submitted, where the prisoner had paid for copies of documents to be used as evidence in his various lawsuits, was not indigent, had funds to pay the filing fee for the civil rights action, and had brought at least ten federal civil rights actions in the previous six years and had a history of abusive filings. (Wichita County Detention Center, Texas)

U.S. Appeals Court
INDIGENT INMATES
POSTAGE

Blaise v. Fenn, 48 F.3d 337 (8th Cir. 1995). An inmate challenged a state prison regulation limiting funds provided to indigent inmates out of which inmates purchased postage for legal mail. The U.S. District Court granted summary judgment for the prison and the officials, and the inmate appealed. The appeals court, affirming the decision, found that the prison regulation placing some limits on the amount of free postage to which an inmate is entitled for legal mail was rationally related to the legitimate penological goal of preserving prison resources and encouraging sound fiscal decisions and discipline in inmates. (Iowa State Penitentiary)

U.S. District Court
LAW LIBRARY

Blaylock v. Painter, 901 F.Supp. 233 (W.D.Tex. 1995). A prisoner filed a § 1983 suit against a county attorney and sheriff alleging violation of his right of access to courts by limiting his access to a law library while he prepared a petition, preventing him from timely filing of his petition. The district court entered judgment for the defendants, finding that the prisoner was provided with reasonable access to the library. The prisoner was permitted to visit the county law library on three occasions for a total of ten hours, during each visit he made numerous photocopies, he was allowed to take photocopied legal material to his cell and permitted to work at his convenience as long as he wished. The court noted that adequacy of access to a law library cannot be measured by mere calculation; the paramount consideration is whether the hours of availability are sufficient to provide time for meaningful research. (Midland County Detention Center, Texas)

U.S. District Court
ACCESS TO COUNSEL
LAW LIBRARY
STATUTE OF LIMITATIONS

Burton v. Cameron County, Tex., 884 F.Supp. 234 (S.D. Tex. 1995). A detainee who suffered from AIDS brought Section 1983 and Texas tort claims actions against a sheriff, a physician for the jail, and the county, for alleged harassment, assault and battery, denial of access to an attorney and law library, and insufficient medical care. On motions for summary judgment by the county and the physician, the district court found that material issues as to whether the detainee was denied the Sixth Amendment right to counsel and access to a law library while being held in the county jail for two months precluded summary judgment in the Section 1983 action against the county. A claim by the detainee that he was a victim of tortious assault and battery by the jail physician was barred by a two year limitations period for personal injury claims under Texas law. (Cameron County Jail, Texas)

U.S. Appeals Court
LEGAL ASSISTANCE

Carper v. Deland, 54 F.3d 613 (10th Cir. 1995). Utah inmates brought a Section 1983 class action against the executive director of the Utah Department of Corrections and the Utah State Prison warden, alleging failure to provide inmates with constitutionally adequate access to courts. The parties cross-moved for summary judgment and the U.S. District Court granted the inmates' motion in part and issued an injunction. The defendants appealed and the inmates cross-appealed. The appeals court found that the Department's legal services plan for prison inmates, which provided private attorneys to assist inmates in preparation and filing of state or federal petitions for writs of habeas

corpus and initial pleadings in civil rights actions regarding conditions of confinement of an inmate in a Department facility or county jail, provided a constitutionally acceptable level of access to courts. (Utah State Prison)

U.S. District Court
APPOINTED ATTORNEY

Castor v. U.S., 883 F.Supp. 344 (S.D. Ind. 1995). Inmates brought an action against the United States alleging that the Federal Bureau of Prisons negligently permitted a condition that caused the exposure of inmates to toxic, friable asbestos. On the United States' motion to dismiss, the district court found that the inmates failed to demonstrate reasonable efforts to secure counsel, as required to support their motion for appointment of counsel in their action for damages against the United States under the Federal Tort Claims Act. They had merely supplied the names of four out-of-state lawyers who had refused to represent them. (USP-Terre Haute, Indiana)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Colon v. Coughlin, 58 F.3d 865 (2nd Cir. 1995). A prisoner filed a § 1983 action against prison officials, alleging that the defendants conspired to concoct false charges, deprive him of a fair hearing, and to subject him to disciplinary action in retaliation for his two prior lawsuits. The district court granted summary judgment for the defendants. The appeals court affirmed in part, vacated in part and remanded the case. The appeals court found that a disciplinary hearing was not conducted by an unbiased hearing officer so as not to have had a preclusive effect on the issue of retaliation, and that summary judgment was precluded by fact issues as to whether prison officials had framed the prisoner for contraband violations in retaliation for filing two prior lawsuits. (Clinton Correctional Facility, New York)

U.S. District Court
CIVIL SUIT
DUE PROCESS
FRIVOLOUS SUITS

Cook v. Boyd, 881 F.Supp. 171 (E.D. Pa. 1995). An inmate and his wife brought a civil rights action against a prison counselor who refused to allow the inmate to participate by telephone in his child's custody hearing. On cross-motions for summary judgment, the district court found that the wife's civil rights claim was frivolous and was properly dismissed. The wife failed to identify any right, privilege, or immunity secured by the Constitution of the United States to have her husband present at the hearing involving the custody of her stepdaughter. In addition, the denial of the prison official of the inmate's telephone access to his daughter's custody hearing did not rise to the level of deprivation proscribed by the Eighth Amendment. The inmate's counsel represented him at the hearing, any mental anguish suffered by the inmate worrying about the custody situation lasted only one day, and the inmate and his wife ultimately won custody of his daughter. The court also found that when the prison official prevented the inmate from participating by telephone in his daughter's custody hearing, the inmate was not denied any constitutional right to maintain his parental relationship with his daughter where the inmate was aptly represented by counsel at the hearing, the inmate was not prohibited from offering testimony through a videotape or other recorded form, and the inmate was not denied the ability to cross-examine through his counsel any witnesses testifying against his interests. (Graterford Prison, Pennsylvania)

U.S. Appeals Court
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. Appeals Court
LAW LIBRARY

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. Appeals Court
42 U.S.C.A.
Section 1983
FRIVOLOUS SUITS
RIGHT TO COUNSEL

Edgington v. Missouri Dept. of Corrections, 52 F.3d 777 (8th Cir. 1995). An inmate filed a Section 1983 complaint against the state Department of Corrections and individual government officials, alleging deliberate indifference to his serious medical needs. The U.S. District Court dismissed without prejudice and denied the inmate's subsequent motion for appointment of counsel. The inmate appealed. The appeals court, affirming the decision, found that although a liberal reading of the inmate's pro se Section 1983 complaint revealed facts which, if proved, would support a claim that he was denied medical treatment, the dismissal without prejudice was appropriate based on the inmate's failure to comply with the district court's order requiring him to specifically plead how each defendant violated his rights. The district court was within its discretion in refusing the inmate's later filed request for counsel, since the court found that the inmate failed to allege enough specific facts to determine whether claims were frivolous, and, even assuming the inmate's complaint presented nonfrivolous claims, the factual and legal issues did not appear complex, there was no conflicting testimony, and the inmate's well-written, although nonspecific, pleadings indicated his basic ability to state claims. (Missouri Department of Corrections)

U.S. District Court
LAW BOOKS
LEGAL ASSISTANCE

Ferreira v. Duval, 887 F.Supp. 374 (D.Mass. 1995). An inmate filed a § 1983 action seeking damages for alleged violations of his equal protection and due process rights connected with his discipline following a group demonstration. The district court granted summary judgment for the defendants on some of the claims. The court denied summary judgment on the issue of whether the plaintiff was denied his due process right of access to courts while serving his 92 day sentence in DDU, finding a need to determine if DDU inmates had available to them the services of a law librarian and inmate law clerks, and whether DDU inmates could obtain from them legal materials that they identified either by name or general topic. (MCI-Cedar Junction, Massachusetts)

U.S. Appeals Court
IN FORMA
PAUPERIS
STATUTE OF
LIMITATIONS

Fratus v. Deland, 49 F.3d 673 (10th Cir. 1995). An inmate filed a pro se Section 1983 action, alleging that a prison violated his constitutional rights by overcharging him for damage he caused to windows and a television, and that the issuance of a restitution order at a hearing where he was not present and at a time when he was mentally incompetent violated his due process rights. The U.S. District Court dismissed the action as timebarred and the prisoner appealed. The appeals court, reversing and remanding, found that the district court improperly dismissed the in forma pauperis complaint by raising, on its own, a statute of limitations defense that was neither patently clear from the face of the complaint nor rooted in adequately developed facts. (Utah State Prison)

U.S. District Court
LEGAL MATERIAL

Frazier v. Forgione, 881 F.Supp. 879 (W.D.N.Y. 1995). An inmate brought a civil rights action under Section 1983 against prison officials for intentionally withholding legal papers from him in violation of his constitutional rights. The district court found that evidence was sufficient to find that a prison official knowingly withheld the inmate's legal papers for a two-year period in violation of his constitutional right of access to courts, where the official placed the documents into an envelope when the inmate was transferred, he was directed to hold the papers to determine whether he was being named by the inmate in proposed lawsuits, making it fair to assume that the official reviewed the papers, and he never tried to return the papers after becoming aware of the inmate's demand for them. Since the inmate had made several complaints against the official early in that month, it was reasonable for the official to assume that the envelope containing the legal papers might have contained a draft of an action against him. (Collins Correctional Facility, New York)

U.S. Appeals Court
WRITING MATERIAL
NOTARY

Gentry v. Duckworth, 65 F.3d 555 (7th Cir. 1995). An inmate filed a § 1983 action against a prison superintendent alleging violation of his right of access to courts by denial of scribe materials. The district court granted summary judgment for the superintendent, but the appeals court vacated and remanded the case. The appeals court held that summary judgment was precluded by fact issues raised by the inmate, and that the inmate had offered facts that implied that the superintendent was personally responsible for the deprivation of a constitutional right. The court held that part of meaningful access to courts that is to be afforded to a prisoner doing his own legal work is the furnishing of basic scribe materials for the preparation of legal documents, including paper, some means of writing, staplers, access to notary services, and mailing materials. The court noted that the superintendent knew of the denial of scribe materials, based on many letters that had been sent by the inmate. (Indiana State Reformatory)

U.S. District Court
PHOTOCOPYING
APPOINTED
ATTORNEY

Giles v. Tate, 907 F.Supp. 1135 (S.D.Ohio 1995). A prisoner who was involved with a civil rights action against prison officials moved to compel discovery, requested appointed counsel and asked for sanctions against the officials for failure to comply with a previous discovery order. The district court denied appointed counsel, noting that the prisoner had failed to certify to the court that he had contacted at least three lawyers who had denied his request for assistance. The court found that the prison's photocopying policy denied the prisoner meaningful access to courts, noting that while a prisoner does not have an unlimited right to free copying, some reasonable means of access to a photocopy machine is necessary.

The prison had a policy of charging $.35 per page and did not allow the prisoner to pay for the copies on a credit basis, making it difficult for the prisoner to secure needed copies using his $9/month state pay. The court found that the inmate had demonstrated actual injury from being effectively denied access to documents critical to his own pending civil litigation. (Warren Correctional Institution, Ohio)

U.S. District Court
LEGAL ASSISTANCE

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. District Court
LEGAL ASSISTANCE
LEGAL MATERIAL

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 inmate's constitutional rights were not violated by his confinement before a hearing on the charges against him. The inmate was provided with a notice of the charges against him and was afforded an opportunity to present his views to the official responsible for his administrative confinement. In addition, the disciplinary hearing conformed with requirements of due process, where the inmate was given written notice of the charges more than 24 hours in advance of the hearing, he attended the hearing at which he testified on his own behalf, called witnesses and submitted documentary evidence, and he was given a written explanation of the hearing officer's disposition. 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. Furthermore, even if the corrections officer in charge of the law library divulged the contents of legal documents confiscated from the inmate, the inmate's privacy rights were not violated, where none of the documents contained information concerning any inmates. The court also found that fact questions as to whether a published and posted rule existed that prohibited the inmate from keeping legal documents in his cell, whether the inmate was notified of any such rule and whether the inmate was present when the corrections officer in charge of the law library orally ordered the inmate law library assistants to remove all legal work, including other inmates' legal materials, from their personal possession and to store them in the library, precluded summary judgment on the inmate's claim that he was disciplined for an unposted rule in violation of his due process rights. Defendants were entitled to qualified immunity on all claims except the claim that the inmate was disciplined for an unposted rule. (Washington Correctional Facility, New York)

U.S. Appeals Court
FRIVOLOUS SUITS

Horton v. Cockrell, 70 F.3d 397 (5th Cir. 1995). An inmate filed suit alleging failure of prison officials to protect him from another prisoner. The district court dismissed the case as frivolous and the inmate appealed. The appeals court held that the claim had an arguable basis in law and fact and should not have been dismissed, vacating the district court decision and remanding the case. The inmate was involved with two altercations with another inmate. The inmate alleged he was threatened with extortion and assault and therefore threw the first punch in the initial altercation. The appeals court found that prison authorities must protect inmates from current threats from fellow prisoners, but must also guard against sufficiently imminent dangers that are likely to cause harm in the next week, month or year. The court noted that an in forma pauperis case, such as this one, is factually frivolous only if the facts alleged rise to the level or being irrational or wholly incredible; merely unlikely allegations do not satisfy this demanding test. (Clements Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
ACCESS TO 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
TELEPHONE

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 inmate's request was denied because he lacked sufficient money in his trust fund account. The court noted that the convenience of access to courts is not constitutionally protected, and the inmate did not demonstrate any actual interference that resulted from the denial of the call. (West Tennessee High Security Facility)

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

Ivey v. Harney, 47 F.3d 181 (7th Cir. 1995). An inmate filed a Section 1983 action contending that medical care provided for his slip and fall injury violated his rights under the Eighth Amendment. The district court appointed counsel to help the inmate make a required demonstration and the counsel concluded that expert medical evidence was called for. The U.S. District Court entered a writ directing the inmate's custodian to transport him to Chicago for a physical examination to aid his cause and the Department of Corrections appealed. The appeals court, reversing the decision, found that neither the habeas corpus statute nor the All Writs Act permitted the district court to order a custodian to transport a prisoner outside prison to acquire evidence in a Section 1983 suit to which the custodian was not a party. (Illinois Department of Corrections)

U.S. District Court
PRIVILEGED COMMUNICATION

Jermosen v. Coughlin, 877 F.Supp. 864 (S.D.N.Y. 1995). An inmate brought a Section 1983 action against correspondence clerks and various prison officials, alleging that the defendants improperly tampered with his privileged correspondence. On the parties' motion for summary judgment the district court found that the inmate failed to demonstrate that he was prejudiced in pursuit of his legal action or that his access to court was otherwise impaired by prison correspondence clerks' alleged improper handling or confiscation of a tape of the inmate's disciplinary hearing, as required to establish the inmate's Fourteenth Amendment access to court claim. (Sing Sing Corr. Facil., New York)

U.S. District Court
JAIL HOUSE LAWYERS

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 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 ruling was reversed for issues (1) and (2) above. The appeals court found that these practices did not violate prisoners' equal protection rights. (Texas Board of Pardons and Paroles)

U.S. District Court
FRIVOLOUS SUITS IN FORMA PAUPERIS

Jones v. Warden of Stateville Correctional Center, 918 F.Supp. 1142 (N.D.Ill. 1995). Seventeen of a prison inmate's civil rights complaints were consolidated for a ruling on his petition to proceed in forma pauperis. The district court dismissed all of the cases, denied all motions, and ordered sanctions. The court found that neither the equal protection clause nor the First Amendment accorded a male inmate the right to have access to female clothing while confined in a state prison. The court found several of the inmate's suits to be frivolous and imposed a sanction precluding the inmate from submitting or filing more than three complaints or petitions in forma pauperis in any one calendar year. The court noted that this sanction was warranted by the inmate's repeated and flagrant abuse of the judicial process by inundating the courts with frivolous and repetitive lawsuits, and deliberately failing to disclose the existence of prior related suits. The court stated that the inmate has a "penchant for lingerie and litigation." Among other things, the inmate had sued for the right of access to bras and panties. (Stateville Corr. Center, Illinois)

U.S. District Court
RIGHT TO COUNSEL

Lazoda v. Maggy, 900 F.Supp. 596 (N.D.N.Y. 1995). An inmate brought a civil rights action against officials alleging that the filing of a disciplinary report because of his refusal to comply with an order to provide exemplars and prints was retaliatory. The district court dismissed the case, finding that it was reasonable for officials to believe that they had the authority to order the inmate to provide exemplars and prints and that they were not required to allow him an opportunity to consult with counsel before complying with a subpoena that they had received, entitling them to qualified immunity. The officials had received a subpoena requiring the inmate to provide handwriting exemplars and hand, palm and finger prints in relation to an investigation of drug trafficking at the correctional facility. The inmate refused and a disciplinary report was filed against him. (Clinton Correctional Facility, New York)

U.S. District Court
APPOINTED ATTORNEY

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 held that the former inmate was not entitled to an appointed attorney because he was seeking substantial monetary damages and he should have little difficulty securing an attorney to represent him on a contingency basis. (Downstate Correctional Facility, New York)

U.S. Appeals Court
NOTARY

Malik v. Brown, 71 F.3d 724 (9th Cir. 1995). An inmate who had legally changed his name after he was incarcerated and after he converted to the Sunni Islam religion, filed a civil rights suit against prison officials alleging they violated his statutory and constitutional rights by refusing to process mail and documents in which he used his religious rather than his committed name. The district court denied summary judgment for the officials and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the inmate's First Amendment interest in using his legal religious name, at least in conjunction with his committed name, was clearly established at the time of the alleged violation for purposes of qualified immunity and that a reasonable officer would not believe it was proper to punish an inmate for mailing out correspondence with both his religious and his committed name on it. The court noted that allowing the inmate to put his religious name next to his committed name on outgoing mail was an obvious, easy accommodation that prison officials could have adopted. The court found that a prison notary public who refused to notarize a legal document on which the inmate's signature did not match his prison identification was entitled to qualified immunity, and that the notary would have violated the law if she had notarized the document. The court noted that the Religious Freedom Restoration Act (RFRA) was not applicable to this case because it was passed after the alleged violations took place. (Washington State Department of Corrections)

U.S. Appeals Court
ACCESS TO ATTORNEY

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
CIVIL SUIT
LAW BOOKS

Marange v. Fontenot, 879 F.Supp. 679 (E.D. Tex. 1995). A former county jail inmate brought a civil rights action against a sheriff claiming a violation of his constitutional right of access to the courts by failing to provide an adequate law library for defense against a civil suit. The district court found that the prisoner's First and Fourteenth Amendment rights to court access extend to legal activities in defending against civil actions. County jails are not exempt from a requirement of law library access for inmates. Those incarcerated in county jails for a period of time sufficient to petition the courts are entitled to access, and confinement in jail for eight months was sufficient to trigger a right of court access. The court also found that a "bookmobile" system allowing the prisoner to check out specifically requested books on a periodic basis is an impermissible method of providing prisoners with court access. Furthermore, the inmate did not waive his right of access to the courts with respect to defense of a civil suit against him even though he had between 4 and 13 months liberty after being served and before being incarcerated, during which time he did nothing to answer or otherwise defend himself, and did nothing to seek a new trial or appeal a default judgment after he obtained access to the state prison's law library. A default judgment was not entered until the inmate had been incarcerated in the county jail for eight months and, once incarcerated, he made reasonable and timely attempts to defend himself. (Orange County Jail, Texas)

U.S. Appeals Court
SEARCHES
LEGAL MATERAL

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
LAW LIBRARY

Muhammad v. Hilbert, 906 F.Supp. 267 (E.D.Pa. 1995). A county prison inmate filed a pro se § 1983 action against a correctional officer seeking declaratory judgment, permanent injunction, temporary restraining orders and compensatory and punitive damages. The inmate alleged that the officer interfered with his right of access to courts by denying him access to the prison law library one time when he was tardy. The district

court granted summary judgment for the correctional officer finding that a one-time denial of access to the prison law library did not infringe on the inmate's rights. The inmate failed to show that the denial affected his impending litigation in some way, and the inmate used the library eleven other times during the month in question. The inmate had also alleged that the officer's statement to him, that filing a grievance about his denial of access might be in vain, was not harassment that infringed on the inmate's right of access to courts. The inmate claimed that the officer "verbally attacked and harassed him" while he was using the library in response to his filing a grievance. (Lehigh County Prison, Pennsylvania)

U.S. District Court
RETALATION FOR LEGAL ACTION
PRIVILEGED CORRESPONDENCE

Pacheco v. Comisse, 897 F.Supp. 671 (N.D.N.Y. 1995). An inmate filed a § 1983 action against corrections officials and the district court granted summary judgment for the defendants, in part, and denied it in part. The court found that the department of corrections was not entitled to qualified immunity on the allegation that a superintendent retaliated against an inmate for exercising his constitutional right to petition the government for redress of grievances. The inmate was prevented from attending a trial on his claim against the State of New York. Prison officials contend that the inmate was not allowed to attend because of his nine month refusal to take a TB test, which made him a health risk. The inmate acknowledged that he refused to take the test, but claims he did so for religious reasons and that the official knew he was amenable to other forms of testing. The inmate alleged that the official used the TB test to justify refusal to allow him to attend court, in retaliation for legal action. The TB test required injecting a serum derived from bacterium into the skin, and the inmate, an orthodox Muslim, claimed he was prohibited from voluntarily ingesting the bacterium under his interpretation of the Qur'an. The court noted that evidence demonstrated that the inmate had lodged numerous complaints against the superintendent, that the superintendent had applied the TB policy inconsistently, and that the superintendent did not use any alternative means to test the inmate, precluding summary judgment. The court also found that summary judgment was inappropriate on the inmate's claim of interference with his legal mail, where the inmate submitted evidence that the addressee provided affordable legal services to Muslim prisoners, and claimed that not receiving postage for his letter prejudiced his attempt to find a lawyer. (Shawagunk Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
FILING FEES

Pink v. Lester, 52 F.3d 73 (4th Cir. 1995). An inmate commenced a Section 1983 civil rights suit alleging that state prison officials violated the inmate's right to due process and access to the courts. The U.S. District Court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court, affirming the decision, found that allegations that the prison officials negligently interfered with the inmate's due process rights and access to the courts by failing to promptly process a money order request from the inmates' account that was needed to perfect the inmate's appeal from a forfeiture order, did not state a Section 1983 civil rights claim. Neither intentional nor deliberate behavior needed for a civil rights claim was alleged. (Powhatan Reception and Classification Center, State Farm, Virginia)

U.S. District Court
RETALIATION
PRIVILEGED CORRESPONDENCE

Riley v. Kurtz, 893 F.Supp. 709 (E.D.Mich. 1995). A prisoner brought a civil rights action against a prison official alleging retaliation for assertion of his First Amendment rights. The district court held that the prisoner stated a claim for retaliation in connection with a disciplinary action that was taken after the prisoner complained about the official to higher authorities. The court found that the official was not entitled to qualified immunity for this allegation because it was clearly established at the time of the incident that officials could not take actions in retaliation for a prisoner's assertion of his First Amendment rights. The court also held that the prisoner stated a case of interference with his First Amendment rights in connection with officials' reading of his confidential mail from a court, where the prisoner had referred to the alleged reading of material related to a specifically-identified federal court lawsuit. (Gus Harrison Correctional Facility, Michigan)

U.S. District Court
FRIVOLOUS SUIT
IN FORMA PAUPERIS

Rudd v. Jones, 879 F.Supp. 621 (S.D. Miss. 1995). An inmate brought a civil rights action concerning conditions of confinement. The district court found that requiring the inmate, before being allowed to proceed in forma pauperis, to file an amended complaint specifically alleging who violated his constitutional rights, approximate dates, times and places, and specifically identifying the rights allegedly violated, and that he make no allegations unless he could produce some evidence to support such allegations, did not constitute an unreasonable restriction on the inmate's access to the courts. The inmate had filed numerous other complaints which had been dismissed as frivolous. (Mississippi)

U.S. District Court
TYPEWRITER
LEGAL MATERIAL
WRITING MATERIAL

Sasnett v. Department of Corrections, 891 F.Supp. 1305 (W.D.Wis. 1995). Several state inmates sued a corrections department and prison officials, challenging rules that restrict inmates' rights to possess religious and legal material. The court dismissed the suit, in part, and denied the defendants' motion to dismiss in part. The court held that prison rules limiting the amount of legal materials an inmate could possess did not deny the inmates their right of access to courts absent any allegations that the rules substantially burdened the inmates' ability to prepare and prosecute their cases. The court also found that an inmate's claim that rules prohibiting him from using a memory typewriter or

computer substantially burdened his ability to prepare a contemplated legal action failed to show that the rules denied him his right of access to the courts. The court noted that inmates have a right to state-supplied pen and paper to draft legal documents, but not to computers and memory typewriters. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

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
LAW LIBRARY

Smith v. Harvey County Jail, 889 F.Supp. 426 (D.Kan. 1995). A pretrial detainee filed a § 1983 suit against jail officials alleging violation of his rights by the provision of inadequate medical care, improper diet, denial of access to a law library, and denial of outdoor exercise. The district court dismissed the case. The court held that the detainee's rights were not violated by the refusal of the jail to allow him access to the county law library, which was located in the same building but which was not secure. The detainee was represented by counsel throughout his pretrial detention, removing any need for the county jail to allow him access to materials in the law library to prepare his defense. The county also granted the detainee's requests for copies of legal materials. (Harvey County Jail, Kansas)

U.S. District Court
SEARCHES

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. District Court
LEGAL MATERIAL TRANSFER

Taylor v. Cox, 912 F.Supp. 140 (E.D.Pa. 1995). An inmate challenged the constitutionality of seizure of his personal property in a pro se suit. Prison officials moved to dismiss the case, and the district court denied the motion in part, finding that the inmate had stated claims with regard to interference with access to court and interference with freedom of religion. The inmate was temporarily transferred to another state correctional facility for a parole violation hearing. The inmate claimed that certain legal and religious materials were seized from him and held in the receiving prison's property room until his parole hearing was completed. The inmate claimed that the seizure of his legal material interfered with his defense at one hearing and prevented his appearance at another hearing; the district court found that these allegations, if proved, might have infringed on the inmate's right of reasonable access to court. (SCI-Graterford, Pennsylvania)

U.S. District Court
LAW LIBRARY

Turiano v. Schnarrs, 904 F.Supp. 400 (M.D.Pa. 1995). A § 1983 action was filed by an inmate alleging he was denied meaningful access to courts while a pretrial detainee in a county jail. The district court found that genuine issues of material fact precluded summary judgment in favor of the jail officials. The county jail law library did not contain volumes one through 700 of the Federal Supplement, volumes one through 800 of the Federal Reporter Second Series, contained only two volumes of the Supreme Court Reporter, and contained no volumes of Title 42 of the United States Code or any federal indices; the court found this to be inadequate to provide meaningful access to courts. The court also found the county's paging system inadequate; the system allows inmates to obtain law books or copies of cases and other legal reference materials upon request from the county courthouse library, but no list of books available was ever provided to inmates and officials did not make inmates aware of the system. (Huntingdon County Jail, Pennsylvania)

U.S. Appeals Court
VIDEO COMMUNICATION

U.S. v. Baker, 45 F.3d 837 (4th Cir. 1995). An inmate sought a review of a civil commitment hearing. The U.S. District Court found that the inmate's due process and statutory rights were not violated by the commitment hearing and the inmate appealed.

The appeals court, affirming the decision, found that the video conference procedure for the commitment hearing was not unconstitutional as applied, in light of the slight risk of erroneous committal and the substantial government interest, including the administrative and safety burdens in transporting potentially mentally unstable persons to a courthouse. The court found that the statute requiring that a respondent in a commitment hearing be represented by counsel and be afforded an opportunity to testify on his own behalf and to confront and cross-examine witnesses does not generally afford a greater protection than does the Fifth Amendment's due process clause. (Federal Correctional Institution, Butner, North Carolina)

U.S. Appeals Court
CLOTHING-COURT APPEARANCE
LAW LIBRARY
LEGAL MATERIAL
VISITS

U.S. v. Sarno, 73 F.3d 1470 (9th Cir. 1995). Two prisoners who were convicted in federal court appealed their convictions alleging, in part, that access to a law library and access to witnesses while they were confined was inadequate. The appeals court found that the defendants were allowed to use the prison law library for 120 to 140 hours prior to trial and five hours per week after the trial began. The court found that access to witnesses was not impermissably restricted where the defendant could receive visits from witnesses with 48 hours notice, the approval of the defendant's requests were efficient, the defendant could make monitored phone calls at all times and could make two unmonitored phone calls per day, and the defendant had access to the courthouse telephone at lunch. The court also ruled that the defendant's claim that he was compelled to appear before the jury in identifiable prison garb failed for several reasons; his clothing was not identifiable as prison garb and the district court engaged in a "charade" that was designed to prevent the jury from somehow identifying the clothing as prison wear by informing the jury that the defendant's luggage had been lost at he airport. (U.S. District Court for the Central District of California)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Walters v. Edgar, 900 F.Supp. 197 (N.D.Ill. 1995). Prisoners brought a class action against a department of corrections alleging denial of access to courts. The district court found that the department violated segregated inmates' rights by instituting what was essentially a "runner" system, whereby the inmates had no direct access to library books. The court noted that at least one-third of the inmates were unable to read and comprehend legal materials and that they were provided with books and materials they requested by untrained clerks. The court also noted that changes that were made by the department would be given little weight as there was no reason to believe that any improvements made would not be changed back after the case was closed. The court identified the system by which the department provided segregated inmates in a female facility as constitutionally sufficient access to courts by sending two legally trained law clerks to the segregation unit three times each week for as long as they were needed to provide substantive help, and by having a paralegal provide real supervision to the law clerks and help the inmates directly. (Five Maximum Security Institutions, Illinois Department of Corrections)

1996

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
FRIVOLOUS SUITS
COURT COSTS

Abdul-Wadood v. Nathan, 91 F.3d 1023 (7th Cir. 1996). A prisoner sued prison officials alleging cruel and unusual punishment, and the district court dismissed the case. The appeals court affirmed, finding that the inmate's claims were frivolous but that all appeals were to be decided on their merits, even though the prisoner had achieved three strikes against him under the Prison Litigation Reform Act (PLRA). The court found that retroactive application of PLRA was permissible where the prisoner had ample chance to dismiss his frivolous litigation after the effective date of the Act. The court held that new docket fee requirements would be applied to new cases or new appeals filed by the prisoner; the court referred to the prisoner as a "frequent filer." (Indiana)

U.S. District Court
TYPEWRITER

Bannan v. Angelone, 962 F.Supp. 71 (W.D.Va. 1996). An inmate filed a pro se complaint under § 1983 seeking injunctive relief with respect to a prison policy regarding personal belongings. The district court granted summary judgment in favor of the defendants, finding that the inmate had no general constitutional right to possess property while in prison. The court held that the prison policy which prohibited inmates from possessing word processors or typewriters did not constitute an unconstitutional hinderance of the inmate's access to courts, and that the prison procedures for seizing nonconforming inmate property satisfied due process. The inmate received notice of the new policy and was given 12 months to dispose of unauthorized property voluntarily. Procedures provided for notice to affected inmates and provided the right to appeal a decision before confiscation. The prison requires inmates to sign a form releasing the department of corrections from civil liability in the event that an inmate's personal property is lost or stolen; the court held that the policy did not violate the inmate's due process rights. (Virginia Department of Corrections)

U.S. Appeals Court
INDIGENT INMATES
POSTAGE
PRIVILEGED CORRESPONDENCE

Bell-Bey v. Williams, 87 F.3d 832 (6th Cir. 1996). An inmate filed a pro se civil rights action claiming violation of his First Amendment right of access to courts by a prison official. The prisoner was denied a loan for postage unless he allowed the official to inspect his outgoing legal mail. The district court dismissed the case and the appeals court affirmed. The appeals court found that the official was entitled to qualified

immunity because she neither knew nor should have known of the relevant legal standard. The court also held that the policy requiring inspection of outgoing legal mail if an indigent inmate sought a loan for postage after using his allotment of ten stamps per month, did not overburden the inmate's First Amendment right of access to courts. The policy was triggered only if an inmate sought subsidized postage, the inspection was limited to scanning legal mail, the inspection was conducted in the inmate's presence, and the inmate could seal his mail after the inspection was completed. The court held that the policy contained sufficient safeguards to limit prison officials' review of mail and therefore did not violate the inmate's First Amendment rights. (Ionia Maximum Security Facility, Michigan)

U.S. Appeals Court
LAW LIBRARY

Beville v. Ednie, 74 F.3d 210 (10th Cir. 1996). An inmate brought a § 1983 action against deputies of a detention facility alleging violations of his rights of access to courts and free speech. The district court granted the deputies' motion for summary judgment and the appeals court affirmed the lower court decision. The court held that the detainee, who was temporarily held for 18 days in the facility without a law library and without adequate assistance of persons trained in the law, was not prejudiced by the denial of legal resources during his stay. The court also held that prison officials' examination of the inmate's outgoing mail did not violate the inmate's free speech rights. The court noted that although inspection of mail could chill some speech, it was necessary to protect an important government interest in prison security. (Teton County Jail, Wyoming)

U.S. District Court
RETALIATION FOR LEGAL ACTION

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

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Casteel v. Pieschek, 944 F.Supp. 748 (E.D.Wis. 1996). Detainees brought a § 1983 action against a county jail and jail officials, alleging violation of their right to meaningful access to courts and other claims. The district court granted summary judgment for the defendants, finding that providing the detainees with weekly access to law library materials and letter access to legal assistance organizations did not violate the detainees' right to meaningful access to courts. The court noted that physical access to a law library was not provided and that the detainees were not provided with assistance of counsel for various civil claims. (Brown County Jail, Wisconsin)

U.S. Appeals Court
FRIVOLOUS SUITS
RETALIATION FOR LEGAL ACTION

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
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. District Court
LEGAL MATERIALS
WRITING MATERIALS

Davidson v. Scully, 914 F.Supp. 1011 (S.D.N.Y. 1996). A prisoner moved for a preliminary injunction in his suit against prison officials. The district court refused to grant an injunction regarding the prisoner's claim that furnishings and supplies were inadequate to allow him to prepare his case. The court noted that although having to sit on a bed and write on a shelf attached to the wall, with an undersized pen, using only an overhead light fixture as lighting, might cause strain and make writing less comfortable, these complaints did not amount to an unconstitutional denial of reasonable access. The court found that the state's decisions regarding furnishings and supplies available to inmates in the special housing unit were reasonably related to legitimate penological interests, supporting the need

to limit furniture and light fixtures to items that are immobile. (Auburn Correctional Facility, New York)

U.S. District Court
IN FORMA PAUPERIS
FRIVOLOUS SUITS

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
PLRA-Prison Litigation Reform Act
COURT COSTS

Duamutef v. O'Keefe, 98 F.3d 22 (2nd Cir. 1996). An inmate filed a pro se action asserting violation of his constitutional rights as the result of a disciplinary response to his preparation and circulation of a petition seeking improvements in prison conditions. The district court granted summary judgment in favor of the defendant and the appeals court affirmed. The appeals court held that the Prison Litigation Reform Act (PLRA) filing fee requirement did not apply because the inmate's appeal had been fully briefed before either party had notice of a decision interpreting PLRA's fee provisions to apply retroactively. The appeals court also found that legitimate safety concerns justified the prison's prohibition on the preparation and circulation of inmate petitions in light of the existence of an effective procedure for inmates to communicate their individual grievances. (Gouverneur Correctional Facility, New York)

U.S. Appeals Court
LAW LIBRARY

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 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. (Smith Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
LEGAL MATERIAL

Garrett v. Gilmore, 926 F.Supp. 554 (W.D.Va. 1996). An inmate brought a § 1983 suit seeking injunctive relief for an alleged violation of his constitutional rights when prison officials enforced limitations on the property that was allowed in personal areas in segregation. The district court held that the inmate's right of access to courts was not violated by restrictions on the amount of personal property allowed, and that any mix-up of legal papers which occurred when officers packed-up the property, or possible eventual destruction of excess property, did not violate the inmate's rights. The court noted that an inmate does not have a right to keep an unlimited amount of legal material in his personal area in prison, and that prison officials had a legitimate interest in fire safety. The court also noted that the inmate could have avoided the problem by packing away excess property when he was ordered to do so, and that the inmate failed to demonstrate any injury. (Dillwyn Correctional Center, Virginia)

U.S. District Court
INITIAL APPEARANCE

Gerakaris v. Champagne, 913 F.Supp. 646 (D.Mass. 1996). A plaintiff who was detained at a local police station and transferred to a county jail sued officials and law enforcement officers alleging he was threatened and intimidated in an attempt to prevent him from testifying against a public official, his father-in-law, in a grand jury investigation of professional misconduct. The district court held that the plaintiff stated a § 1983 claim based on alleged denial of free speech, deprivation of medical care, delayed booking, and conspiracy. Following an alleged concerted period of intimidation seeking to dissuade him from cooperating with the investigation of his father-in-law, the plaintiff was arrested at his mother's home for allegedly violating a restraining order. The plaintiff informed the arresting officers that he suffered from several illnesses, for which he was taking prescriptions. The officers refused to permit the plaintiff to retrieve his medications before transporting him to the police station. During his booking at the police station, the plaintiff complained again about his medical and dietary needs. Law enforcement officers deliberately delayed the plaintiff's booking until after the local court had closed, denying him an immediate appearance before a judge. Unable to make bail, the plaintiff was transported to the county jail later that evening, remaining there for two nights. (Peabody Police Station/Middleton House of Correction, Massachusetts)

U.S. District Court
LEGAL ASSISTANCE
LAW LIBRARY

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 that some female inmates in Michigan did not receive legal materials and assistance sufficient to afford them meaningful access to courts. Some classes of inmates were provided access only to mini-law libraries that were suitable for conducting the most basic legal work, available paralegals were subject to the same restrictions on law library accesss as inmates, the paging system for obtaining legal materials limited their availability and caused delay, some mini-law libraries did not even contain basic materials and could be used for only one hour at a time, and some inmates were forced to choose between use of the law library and other prison activities. The court also found that prison segregation policies and the manner in which they were applied to restrict law library access for some classes of female inmates was not reasonably related to legitimate penological interests. (Michigan Department of Corrections)

U.S. Appeals Court
LEGAL ASSISTANCE
CIVIL SUIT

Glover v. Johnson, 75 F.3d 264 (6th Cir, 1996). Female prisoners brought an action challenging the decision of prison officials to terminate funding for a prison legal services program under which inmates were provided with assistance on child custody matters. The prisoners alleged that this violated an earlier order entered in a class action suit which required the state to contract for the provision of legal services. The district court found the prison officials in contempt of the earlier order, but the appeals court reversed the lower court decision. The appeals court ruled that the finding of contempt was an abuse of discretion as the prior order did not require that the state fund legal assistance in any particular area of the law. (Michigan Department of Corrections)

U.S. Appeals Court
RETALIATION FOR
LEGAL ACTION

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

U.S. District Court
PRIVILEGED
CORRESPONDENCE
PHOTOCOPYING

Hall v. Conklin, 966 F.Supp. 546 (W.D.Mich. 1996). A prisoner brought a § 1983 action against prison officials challenging mail policies. The district court found that the Michigan Department of Corrections' new mail policy was constitutional and granted qualified immunity to the officials. The new policy instructed personnel to treat mail from the Attorney General or prosecuting attorneys as legal mail, which was not previously required. The court also held that the prisoner did not suffer any denial of access to court as the result of the officials' refusal to photocopy forms for him, where a court rule required the court to provide forms for the action upon request. (Michigan Department of Corrections)

U.S. Appeals Court
RETALIATION FOR
LEGAL ACTION
JAIL HOUSE
LAWYERS
LAW LIBRARY

Higgason v. Farley, 83 F.3d 807 (7th Cir. 1996). A prisoner filed a civil rights action challenging his placement in a segregation unit. The district court dismissed the prisoner's claim for injunctive relief and granted summary judgment to the defendants. The prisoner appealed. The appeals court affirmed in part, reversed and remanded in part, and vacated and remanded in part. The appeals court found that material fact issues precluded summary judgment on the prisoner's claim that he was transferred to the segregation unit because he filed lawsuits on his own and assisted other prisoners in filing lawsuits. (Indiana State Prison)

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

Jones v. Russell, 950 F.Supp. 855 (N.D.Ill. 1996). A prisoner filed a § 1983 complaint against prison officials for denying him protective custody and sought leave to proceed in forma pauperis. The district court dismissed the complaint, finding that the prisoner failed to state a claim absent any allegation of a history of assaults against him or of a particular vulnerability. The court noted that in determining under the Prison Litigation Reform Act (PLRA) whether to dismiss, a motion to dismiss may be granted only if the court concludes that no relief could be granted under any set of facts that could be proved consistent with the plaintiff's allegations. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
LAW LIBRARY
PHOTOCOPYING
ASSISTANCE
ACCESS TO
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. 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. Prison officials did not violate the inmate's right of access to courts by limiting his access to a law library where the inmate had access to a law library correspondence system which allowed him to obtain copies of requested materials within 24 hours, indices to to help him choose materials, and weekly assistance from inmate law clerks. The inmate's claim that he was denied access to courts because photocopy and notary services were too slow and expensive was properly dismissed because the inmate failed to allege any actual injury related to copy and notary services. The inmate's claim that prison officials denied the inmate contact visits with his attorney was also properly dismissed in the absence of any allegation that denial of contact visits denied the inmate access to his lawyer or prejudiced his access to courts. The court found that the inmate's mail from court, unlike mail from his lawyer, was not "legal mail" and can be opened outside the inmate's presence. (Oregon State Prison)

U.S. Appeals Court
PRIVILEGED
CORRESPONDENCE

Kensu v. Haigh, 87 F.3d 172 (6th Cir. 1996). A state prisoner filed a civil rights action against corrections officials under § 1983, the district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that boxes of materials that were delivered to the prisoner at the prison, which were clearly marked as legal mail, had to be examined in the presence of the prisoner, even though the boxes were delivered by a private individual not the postal service or a private delivery service. The court noted that prison officials may screen incoming packages to protect prison employees, and if screening devices detect the presence of prohibited devices or instruments the packages may be opened for inspection outside the presence of the prisoner-addressee. The court held that prison officials did not improperly deny the inmate access to courts by not permitting him to receive a copy of a cassette tape from his attorney, which allegedly contained a statement from a witness in his criminal trial retracting his testimony, because the prisoner was not prejudiced because he received a transcript of the cassette. (Michigan Department of Corrections)

U.S. Supreme Court
LAW LIBRARY
LEGAL ASSISTANCE

Lewis v. Casey, 516 U.S. 804 (1996). Inmates of the Arizona Department of Corrections brought a class action alleging they were denied adequate legal research facilities and were therefore denied access to courts. The district court found the Department to be in violation of *Bounds* v. *Smith* and issued an injunction mandating detailed, systemwide changes in the Department's prison law libraries and legal assistance program. The appeals court affirmed but the United States Supreme Court reversed and remanded. The Court held that the inmates failed to show widespread actual injury noting that the district court found only isolated instances of actual injury. According to the Court, *Bounds* did not create an abstract, free standing right to a law library or legal assistance, but rather it acknowledged the right of access to the courts. To establish a *Bounds* violation an inmate must demonstrate an "actual injury" by showing that shortcomings in a legal library or legal assistance program have hindered, or are hindering, efforts to pursue a nonfrivolous legal claim. The Court held that *Bounds* does not guarantee inmates the wherewithal to file any and every type of legal claim, but requires only that they be provided with the tools to attack their sentences, directly or collaterally, and to challenge the conditions of their confinement. (Arizona Department of Corrections)

U.S. District Court
LAW LIBRARY

Martinez v. Espinas, 938 F.Supp. 650 (D.Hawai'i 1996). An inmate filed a civil rights complaint against corrections officers alleging violation of his right of access to courts as the result of insufficient access to a law library. The district court held that the prison policy of allowing inmates three hours of law library access each week, with the possibility of an additional three hours, was reasonable and provided meaningful access to courts. (Halawa Correctional Facility, Hawai'i)

U.S. District Court
RIGHT TO COUNSEL

Molesky v. Walter, 931 F.Supp. 1506 (E.D.Wash. 1996). An inmate filed a § 1983 action against prison officials alleging he was compelled to undergo a psychological evaluation prior to his placement in minimum custody in violation of his constitutional rights. The district court granted summary judgment for the officials, finding that the examination did not involve a level of restraint which exceeded the inmate's sentence in such an unexpected fashion as to give rise to protection under the due process clause. The court also found that the examination did not amount to cruel and unusual punishment because it was not an atypical or significant hardship. According to the court, if the inmate had a right to privacy it was justifiably curtailed by the examination which promoted the legitimate penological purposes of determining the need for immediate medical, dental or mental health attention and identifying any need for the continuation of medications or other care. The court further found that the examination did not violate the inmate's equal protection rights. The examination did not violate the inmate's right against self-incrimination. The inmate had been convicted of first-degree child molestation and was concerned that the results of the examination might somehow be used against him in his pending appeal of his conviction. The court found that the inmate was not entitled to the assistance of counsel during the evaluation because the evaluation did not occur in the context of a criminal prosecution, but rather was part of an administrative process initiated by corrections officials. (Airway Heights Corrections Center, Washington)

U.S. District Court
ACCESS TO ATTORNEY

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 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. Appeals Court
POSTAGE

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
LEGAL ASSISTANCE

Nami v. Fauver, 82 F.3d 63 (3rd Cir. 1996). Inmates who were housed under protective custody at a youth correctional facility brought a § 1983 action against corrections officials, alleging they were subjected to cruel and unusual punishment and were denied access to courts. The district court dismissed the complaint and the inmates appealed. The appeals court reversed the lower court decision, finding that allegations were sufficient to state claims for cruel and unusual punishment and denial of access to courts. The inmates alleged that they were denied access to paralegals or other persons trained in the law and that the law librarian refused to help protective custody inmates prepare habeas corpus petitions or civil complaints, and the librarian attempted to frustrate the inmates' action by delaying the return of documents and failing to make copies of legal documents. The inmates alleged that they were effectively prevented from helping each other with legal matters as the result of a facility policy that prohibits them from talking to each other through doors or passing items between cells. The inmates also alleged that they were effectively prevented from submitting written requests for specific legal materials. (Wagner Youth Correctional Facility, New Jersey)

U.S. Appeals Court
LEGAL MAIL

O'Keefe v. Van Boening, 82 F.3d 322 (9th Cir. 1996). A state inmate sued prison officials for their refusal to treat his grievance letters to state agencies and officials as "legal mail." The district court entered summary judgment for the inmate and the prison officials appealed. The appeals court reversed the lower court decision, finding that the prison officials' refusal to treat grievances as legal mail did not violate the inmate's First Amendment rights. Prison policies exempted legal mail from inspection, but the appeals court ruled that inspecting grievance letters served a legitimate penological interest, even if it might have a chilling effect on the prisoner's First Amendment right to petition government for redress of grievances. (Washington State Penitentiary)

U.S. Appeals Court
LAW LIBRARY

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 prison officials were not entitled to qualified immunity on the claim that they retaliated against the inmate for bringing suits against the prison. (Limon Corr. Facility, Colorado)

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. District Court
PHOTOCOPYING

Reynolds v. Wagner, 936 F.Supp. 1216 (E.D.Pa. 1996). County prison inmates filed a class action civil rights suit challenging a policy that charges inmates for their medical care. The court held that a prison policy of charging for photocopying--coupled with charges for medical visits--did not violate the First Amendment. Prisoners were not forced to choose between taking their cases to court and adequate health care because a prison policy guaranteed that legal mail would be sent, and allowed an inmate with insufficient funds a small supply of personal hygiene items, mail supplies and a pencil, and three first class letters per week. (Berks County Prison, Pennsylvania)

U.S. District Court
PHOTOCOPYING
INDIGENT INMATES

Robinson v. Fauver, 932 F.Supp. 639 (D.N.J. 1996). An inmate filed a § 1983 action challenging a New Jersey regulation that defined "indigent inmate," alleging the regulation violated his constitutional rights. The regulation classified an inmate as indigent when the inmate "has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances" but does not classify an inmate as indigent if he or she has a verified "outside source from which to obtain funds." State officials sought to debit the prisoner's account to reimburse the State for legal photo-copying, medical co-payments, fines, court costs, and other assessments. The inmate argued that the State could not levy such assessments on funds that he might receive from outside sources, such as family and friends. The district court upheld the regulation finding it was rationally related to legitimate interests. The court found that the regulation did not violate the equal protection clause, nor did it deprive the inmate of a property interest in violation of due process. (Riverfront State Prison, New Jersey)

U.S. District Court
JAIL HOUSE LAWYER
LEGAL MATERIALS
SEARCHES

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. District Court
LEGAL ASSISTANCE

Smith v. Armstrong, 968 F.Supp. 40 (D.Conn. 1996). Prisoners housed in Connecticut correctional facilities brought an action alleging violation of their right of access to courts. The district court certified the prisoners as a class and a bench trial was held. At the time the action was filed, the Department of Corrections had been assisting inmates in obtaining access to courts by contracting with the Connecticut Prison Association (CPA), a nonprofit corporation that provided various programs for prisoners. The CPA in turn provided legal services through Legal Assistance to Prisoners (LAP) which it had operated since 1972. Many of the LAP attorneys were inexperienced and turnover was high due to difficult and demanding caseloads and "very insignificant" salaries. Due to an increasing number of requests for legal services and a backlog of cases, LAP instituted a moratorium in 1994, during which they refused to accept new cases. The district court found that the inmates failed to establish that they suffered actual injury as the result of shortcomings in legal programs and therefore lacked standing to bring the claims. (Correctional Institution at Cheshire and other Connecticut facilities)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Shiflet v. Cornell, 933 F.Supp. 1549 (M.D.Fla. 1996). A prisoner who suffered a stroke brought a civil rights action against prison officials alleging lack of treatment. The district court granted summary judgment for the defendants, finding that prison officials were not alleged to have been personally involved with the constitutional deprivations and therefore the prisoner could not recover from them. The prisoner had alleged that he was subjected to retaliation for filing the lawsuit, but the court ruled that the allegations constituted nothing more than a claim of verbal harassment which was not cognizable under the federal civil rights statute. (Desoto Correctional Institution, Florida)

U.S. District Court
LAW LIBRARY

Stewart v. Block, 938 F.Supp. 582 (C.D.Cal. 1996). An inmate brought a § 1983 action against a county sheriff alleging several constitutional violations while he was incarcerated. The district court granted summary judgment in favor of the sheriff. The court found that the inmate's failure to allege an injury as the result of his claim that he was denied meaningful access to a law library was fatal to his claim. The court found that the inmate was not entitled to a grievance procedure. The court held that the inmate's admission that the meals he was provided met his nutritional needs was fatal to his claim that the sheriff violated the Eighth Amendment by placing him on a disciplinary diet. (Los Angeles County Jail, California)

U.S. District Court
IN FORMA PAUPERIS
FRIVOLOUS SUIT
LAW BOOKS
TRANSFER
LEGAL MATERIAL

Stotts v. Salas, 938 F.Supp. 663 (D.Hawai'i 1996). An inmate who was transferred to another state filed an in forma pauperis complaint against corrections officials alleging violation of his right of access to courts. The district court dismissed the case, finding that the inmate failed to show any actual injury warranting the sending of law books from his former state of incarceration. The court found that the lack of law books from his former state did not warrant the inmate's transfer back to that state. The court held

a 21-day confiscation of the inmate's legal materials which resulted when the inmate was placed in lockdown did not violate his right of access to courts. The court noted that an in forma pauperis complaint is "legally frivolous" if it embraces an inarguable legal conclusion, and that it is "factually frivolous" if facts rise to the level of being irrational or wholly incredible. (Newton County Community Detention Center, Texas, and Halawa Correctional Facility, Hawaii)

U.S. District Court
RETALIATION

Tajeddini v. Gluch, 942 F.Supp. 772 (D.Conn. 1996). A prisoner brought an in forma pauperis suit against prison officials. The district court held that fact issues barred summary judgment for the officials on the prisoner's claims that the officials used a disciplinary proceeding and transfer to another prison as retaliation for the prisoner's complaints. The court also found that fact issues precluded summary judgment on the prisoner's claim that he suffered cruel and unusual punishment in the form of deliberate indifference to his medical needs. The prisoner alleged that he experienced trembling, weakness and permanent pain while in administrative segregation, and that he repeatedly requested pain medication but was denied it. The court found that the prisoner failed to establish a claim for interference with access to courts. (FCI Danbury, Connecticut)

U.S. Appeals Court
PRO SE LITIGATION
COURT COSTS

Treff v. Galetka, 74 F.3d 191 (10th Cir. 1996). An inmate filed a § 1983 suit against a prison mailroom supervisor, individually and in his official capacity, alleging violation of his rights by failing to process his outgoing mail. The district court granted summary judgment for the supervisor and the inmate appealed. The appeals court affirmed, finding that the inmate failed to prove that his mail was not delivered, that the mailroom supervisor was responsible for the alleged nondelivery, and that the supervisor acted intentionally or with deliberate indifference. The court also ruled that the improved financial condition of the inmate during the course of the litigation warranted the imposition of a requirement that he pay fees and costs. (Utah State Prison)

U.S. District Court
TYPEWRITER

Wenzler v. Warden of G.R.C.C., 949 F. Supp. 399 (E.D.Va. 1996). A state prisoner brought an action against a warden seeking injunctive relief under § 1983. The district court dismissed the case, finding that the prisoner was not denied access to courts by a prison regulation that resulted in the confiscation of his typewriter. According to the court, the prisoner did not have a possessory interest in a typewriter that was protected by the due process clause. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
LAW LIBRARY
PLRA-PRISON
LITIGATION
REFORM ACT

White v. Gregory, 87 F.3d 429 (10th Cir. 1996). A state inmate brought a civil rights action against corrections officials and a sheriff alleging violation of his rights by denying his request for additional time in the jail law library. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed the lower court decision, finding that limiting access to the law library to two hours per week was not a constitutional violation. The court also ruled that the Prison Litigation Reform Act (PLRA) did not apply to this case because the inmate filed his appeal on the day the President signed the law. (Adams County Detention Facility, Colorado)

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U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Aliwoli v. Gilmore, 127 F.3d 632 (7th Cir. 1997). A petitioner sought a writ of habeas corpus which was denied by the district court. The appeals court affirmed in part, vacated in part, and remanded the case. The appeals court found that although the district court erred in applying the amended habeas corpus statute to a petition filed before the Antiterrorism and Effective Death Penalty Act (AEDPA) effective date, automatic reversal was not required. The appeals court could review the denial of the petition using standards applicable before the AEDPA took effect to determine if the district court's decision was proper. (Pontiac Correctional Center, Illinois)

U.S. District Court
LAW LIBRARY

Amen-Ra v. Department of Defense, 961 F.Supp. 256 (D.Kan. 1997). Inmates confined at the U.S. Disciplinary Barracks brought a civil rights action against the Department of Defense (DOD) seeking release from confinement and injunctive relief. The district court held that the inmates lacked standing to challenge the conditions of confinement in a special housing unit and death row housing. The court found that the inmates failed to establish denial of access to courts based on a broad complaint that they had difficulty obtaining access to a law library because the library's hours of operation conflicted with educational and recreational programs, where the inmates made no showing that they had been unable to pursue a claim because of the inability to obtain library materials. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)

U.S. District Court
FILING FEES

Beck v. Symington, 972 F.Supp. 532 (D.Ariz. 1997). Inmates brought a class action suit challenging Arizona statutes that require inmates to pay court fees and costs. The district court held that the statutes did not affect an inmate's ability to gain adequate, sufficient and meaningful access to courts, and that the statutes had a reasonable basis and therefore could withstand an equal protection challenge. According to the court, the statutes

simply forced an inmate to make the same economic choices required of unincarcerated litigants, and required only a 20% initial payment with 20% installments thereafter. The court noted that the statutes allowed the filing of an action by an inmate who was unable to pay. (Arizona Department of Corrections)

U.S. District Court
FRIVOLOUS SUITS
TYPEWRITER
LEGAL ASSISTANCE

Brinson v. McKeeman, 992 F.Supp. 897 (W.D.Tex. 1997). An inmate filed a § 1983 action against the counsel of the state bar and the clerk of a federal district court. The district court dismissed the action, finding it was frivolous and redundant, and barring the inmate forar was entitled to qualified immunity for the inmate's allegation that the state bar failed to properly investigate the inmate's grievance against the federal court clerk, noting that the inmate possesses no federally-protected constitutional right to compel the state bar to investigate his grievance. The court found that the inmate failed to present facts that established that his ability to file nonfrivolous lawsuits had been impeded by any act or omission of the defendants. The court noted that the inmate's right of access to court does not include the right of access to a typewriter, to carbon paper, to reproduction equipment or to face-to-face meetings with other inmates. According to the court, an inmate who knowingly and voluntarily waives appointed representation by counsel in a criminal proceeding is not entitled to access to a law library. (Texas Department of Criminal Justice)

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

Carson v. Johnson, 112 F.3d 818 (5th Cir. 1997). A prisoner who was proceeding pro se and in forma pauperis filed a petition seeking a writ of habeas corpus, challenging his confinement in administrative segregation. The district court construed the petition as a § 1983 action and barred the prisoner from proceeding in forma pauperis. The prison appealed and the appeals court dismissed the action, finding that the district court had properly construed the action as a § 1983 suit and therefore the three strikes section of the Prison Litigation Reform Act (PLRA) applied. The court also found that the three strikes section of PLRA did not violate the prisoner's due process right of access to courts, nor did the three strikes section violate the prisoner's equal protection rights, even though it did not apply to nonprisoners. (Texas Department of Criminal Justice)

U.S. District Court
LAW LIBRARY
PLRA-Prison Litigation Reform Act

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

U.S. Appeals Court
RETALIATION

Clarke v. Stalder, 121 F.3d 222 (5th Cir. 1997). A state inmate who was convicted of violating a Louisiana corrections rule that prohibited inmates from threatening employees with legal redress during a "confrontation situation" filed a § 1983 action alleging violation of his First Amendment free speech rights. The inmate also alleged that prison employees retaliated against him for exercising his right of access to courts. The district court declared the prison rule unconstitutional, ordered restoration of the inmate's good time credits, and denied the retaliation claim. All parties appealed. The appeals court held that a habeas corpus petition was the proper vehicle for the inmate to employ in pursuing his claim that he was entitled to damages and for the return of his good time credits. The appeals court found that the prison rule was facially invalid, and that the record supported the denial of the retaliation claim. The disputed rule provided, in part "DEFIANCE (Schedule B): ...No prisoner shall threaten an employee in any manner, including threatening legal redress during a confrontation situation (this does not mean telling an employee of planned legal redress outside a confrontation situation and certainly does not mean the actual composition or filing of a writ, suit, etc; threatening to write to the Secretary, the Warden, or other institutional officers is not a violation." (Work Training Facility at Pineville [Camp Beauregard], Louisiana)

U.S. District Court
RETALIATION FOR LEGAL ACTION

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
LAW LIBRARY

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. Appeals Court
APPOINTED ATTORNEY
PRO SE LITIGATION

Forbes v. Edgar, 112 F.3d 262 (7th Cir. 1997). A female inmate sued prison officials alleging deliberate indifference to her serious medical needs. The district court denied the inmate's request to proceed in forma pauperis and for appointment of counsel, and entered judgment for the officials. The appeals court affirmed, finding that denial of an appointed attorney was not an abuse of discretion, as the inmate was an "exceptionally able litigant" who had experience litigating other cases, and the issues were not too complex. The court found that despite her claims that officials allowed tuberculosis (TB) to spread in the prison and allegedly offered the wrong type of drug therapy for her TB, they were not deliberately indifferent. The court held that the Eighth Amendment did not provide for a specific treatment nor for foolproof protection from infection, as sought by the inmate. (Dwight Correctional Center, Illinois)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

Gardner v. Howard, 109 F.3d 427 (8th Cir. 1997). An inmate brought a § 1983 action against prison officials alleging improper opening of his legal mail. The district court denied the officials' motion for summary judgment on qualified immunity grounds and the officials appealed. The appeals court reversed and remanded, finding that the prison's policy regarding legal mail met minimum constitutional standards. The court held that an isolated incident of opening an inmate's incoming legal correspondence, without any evidence of improper motive or a resulting interference with the inmate's right to counsel or to access to courts, does not give rise to a constitutional violation. A mail clerk had inadvertently opened the inmate's incoming legal mail; when she discovered her mistake, she stapled the envelope shut without reading it, attached a confidential mail receipt form to the envelope, and delivered it to the inmate. (Omaha Correctional Center, Nebraska)

U.S. Appeals Court
JAIL HOUSE LAWYERS
LEGAL ASSISTANCE
TRANSFER
LEGAL MATERIAL

Goff v. Nix, 113 F.3d 887 (8th Cir. 1997). Jailhouse lawyers sought an injunction against a penitentiary's prohibition of legal correspondence between inmates in different prison units. The district court enjoined the prohibition and the state appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prohibition did not unconstitutionally burden an inmate's right of access to courts, but that failure to provide for the return of an inmate's legal documents when a jailhouse lawyer was transferred to another unit violated the inmate's right of access to courts. According to the court, a jailhouse lawyer has no independent right to provide legal service, but may assert the right on behalf of other inmates who are otherwise unable to obtain access to courts. (Iowa State Penitentiary)

U.S. District Court
LAW LIBRARY

Gomez v. Vernon, 962 F.Supp. 1296 (D.Idaho 1997). Inmates brought a class action under § 1983 alleging numerous civil rights violations resulting from the operation of a prison law library. The defendants moved to dismiss for lack of standing and to decertify the class. The district court denied the motions. The court found that a factual dispute as to whether the inmates were actually able to file claims despite the conditions in the libraries precluded summary judgment. (Idaho State Correctional Institution)

U.S. Appeals Court
AEDPA-Antiterrorism & Effective Death Penalty Act

Hallmark v. Johnson, 118 F.3d 1073 (5th Cir. 1997). Several prisoners petitioned for habeas corpus relief raising a common challenge to a state directive that eliminated corrections officials' discretion to restore previously forfeited good time credits. The district court denied the petitions and the appeals were consolidated. The appeals court affirmed in part, dismissed in part, and remanded. The appeals court found that the directive did not result in an ex post facto violation and that the prisoners had no liberty interest in the restoration of their good time credits. The appeals court found that it lacked jurisdiction over one appeal because the district court failed to grant or deny a certificate of probable cause (CPC). Under the Antiterrorism and Effective Death Penalty Act (AEDPA), once the district court has denied a habeas corpus petitioner's application for a certificate of probable

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

Harris v. Lord, 957 F.Supp. 471 (S.D.N.Y. 1997). A Muslim inmate brought a § 1983 action against correctional officers after she was denied permission to attend a weekly religious service and when she did not obtain immediate mental health services. The district court found that the section of the Prison Litigation Reform Act (PLRA) that denied an inmate a civil action for mental or emotional injury without a showing of physical injury did not apply retroactively. (Bedford Hills Correctional Facility, New York)

cause, the appeals court had no jurisdiction to hear an appeal from denial of habeas relief unless the appeals court granted CPC. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
APPOINTED ATTORNEY
PRO SE LITIGATION

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. District Court
CIVIL SUIT
PLRA-Prison Litigation Reform Act
FRIVOLOUS SUIT

Hicks v. Brysch, 989 F.Supp. 797 (W.D.Tex. 1997). A state prisoner brought an in forma pauperis § 1983 action against a state court clerk after the clerk rejected the prisoner's attempts to file a civil suit. The district court found that the clerk's acts were justified by the prisoner's failure to submit information about his litigation history as required by a state statute. The court determined that the action was legally frivolous under the in forma pauperis statute as amended by the Prison Litigation Reform Act (PLRA) and that the prisoner's failure to pay a filing fee provided another grounds for dismissal. (John B. Connally Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
AEDPA-Antiterrorism & Effective Death Penalty Act

Holman v. Gilmore, 126 F.3d 876 (7th Cir. 1997). After a federal district court granted habeas corpus relief to a state inmate who had been sentenced to death, the state appealed. The appeals court reversed and remanded with instructions, finding that the Antiterrorism and Effective Death Penalty Act (AEDPA) applied to the inmate's petition which was filed after AEDPA's effective date, even though the inmate had requested the assistance of counsel prior to AEDPA's effective date. (Illinois)

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

In re Smith, 114 F.3d 1247 (D.C.Cir. 1997). An inmate sought a writ of prohibition against the U.S. Department of Justice and the U.S. Parole Commission prior to his release from prison, seeking to correct his parole files and seeking compensatory and punitive damages under the Privacy Act of 1974. The appeals court held that the fee requirements of the Prison Litigation Reform Act (PLRA) applied to the petition, and that the term "civil action" as used in PLRA includes a petition for writ of prohibition which contains underlying claims which are civil in nature. The court found that the inmate was obligated to fulfill applicable PLRA requirements and to pay amounts due under the statute, notwithstanding his subsequent release. According to the court, if a litigant is a prisoner on the day he files a civil action, the Prison Litigation Reform Act applies. (United States Parole Commission)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Jackson-El v. Winsor, 986 F.Supp. 440 (E.D.Mich. 1997). A state prisoner brought a § 1983 action against corrections officers and officials alleging retaliation against him for initiating legal proceedings. The district court dismissed the case, finding that the prisoner's claim that an officer planted a knife in his cell could not serve as the basis for a § 1983 action. The court also held that the alleged conduct of an officer, in calling the prisoner a "liar" and making a failed attempt to issue a misconduct ticket, did not shock the conscience as to constitute an action under § 1983. (State Prison of Southern Michigan-Central Complex).

U.S. District Court
AEDPA-Antiterrorism & Effective Death Penalty Act

Jenkins v. Cain, 977 F.Supp. 1255 (W.D.La. 1997). A state inmate filed a federal petition for a writ of habeas corpus. The district court dismissed the petition, finding that the one-year limitation set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applied to the inmate's petition, which was filed subsequent to the Act's enactment but which related to matters occurring prior to enactment. The court held that AEDPA's limitation period for habeas petitions regulated only secondary conduct and, therefore, did not have a retroactive effect. (Louisiana State Penitentiary)

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

Jensen v. County of Lake, 958 F.Supp. 397 (N.D.Ind. 1997). A county filed a motion to terminate a consent decree and judgment order through the provisions of the Prison Litigation Reform Act (PLRA). The district court held that Congress could, through the Prison Litigation Reform Act, modify the authority of a court to award relief greater than that required by federal law, and thus the PLRA section providing for immediate termination of prospective consent decrees in pending cases did not violate the separation of powers doctrine, nor did retroactive application of the section. The court also found that PLRA did not violate equal protection. However, the court found that inmates had adequately alleged that overcrowding made it difficult for jail personnel to ensure the safety of inmates and therefore

further proceedings were necessary before the district court could terminate the consent judgment. The court held that PLRA does not violate the separation of powers doctrine, even though by altering prospective relief PLRA makes futile the careful negotiations that have gone into crafting a consent decree, the parties' strategy to save time and effort in litigating, and compromises made in exchange for giving up risk. According to the court, even if a consent decree in prison reform litigation was a "contract" for the purposes of the contract clause, Congress did not act irrationally or arbitrarily when it enacted PLRA and therefore did not impermissibly impair contract rights. The initial lawsuit was filed in 1974 on behalf of inmates of the Lake County Jail and a consent decree was entered in 1980. Two years later the defendants admitted that they had not complied and a broader and more detailed agreement was entered, encompassed in a judgment order in 1982. Since then, the district court has maintained continuing supervision over the operation of the jail in order to enforce the 1980 decree and the 1982 judgment. (Lake County Jail, Indiana)

U.S. District Court
STATUTE OF LIMITATIONS
SCREENING

Johnson v. Hill, 965 F.Supp. 1487 (E.D.Va. 1997). A former prisoner filed a civil rights action. The district court ruled that the action was subject to a preliminary screening procedure even though the prisoner had been released, and that the court could conduct a screening even though the former prisoner had paid the filing fee in full. The court found that the action was barred by Virginia's two-year statute of limitations for personal injury actions, noting that while no specific federal statute of limitations applies to § 1983 actions, in Wilson v. Garcia the Supreme Court held that the state statute of limitations applies to all § 1983 claims. (Prince William County Jail, Virginia)

U.S. District Court
PRIVILEGED COMMUNICATION
VIDEO COMMUNICATION

Jones v. City and County of San Francisco, 976 F.Supp. 896 (N.D.Cal. 1997). Pretrial detainees brought a class action against the City and County of San Francisco and various city officials challenging the constitutionality of their conditions of confinement at a jail. The district court granted various summary judgment motions filed by the plaintiffs and the defendants, enjoining future overcrowding based on past unconstitutional overcrowding. The court found due process violations based on the defendants' inadequate response to fire safety risks at the jail, excessive risks of harm from earthquakes, physical defects in the jail's water, plumbing and sewage systems, excessive noise levels, and poor lighting. The court held that the plaintiffs failed to show deliberate indifference or another basis for liability on the claims of current overcrowding, inadequate food preparation and storage, provision of medical services, personal visitation, hours and accessibility of legal visitation, legal materials and assistance, and outdoor recreation.

The court found that questions of fact precluded summary judgment on the claims that the jail's video conferencing system did not permit confidential attorney-client discussions, and whether a substantial number of inmates could easily utilize the system. The court held that to establish a constitutional violation for lack of privacy for attorney-client consultations, it was enough that harm appeared imminent, to the extent that any inmate might be hesitant to disclose names and information relevant to his or her attorney's investigation and necessary to secure advice. (San Francisco Jail No. 3, California)

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

Kincade v. Sparkman, 117 F.3d 949 (6th Cir. 1997). A prisoner petitioned for habeas corpus in two separate actions and the district court denied relief. The appeals court held that the fee requirements of the Prison Litigation Reform Act (PLRA) did not apply to either petition. But the appeals court noted that if a prisoner proceeding in forma pauperis attempts to "cloak" another civil action, such as an alleged civil rights violation, under the auspices of a petition for habeas corpus or a petition for postconviction relief, the district court must assess the prisoner the applicable PLRA filing fee. (Kentucky)

U.S. Appeals Court
LAW LIBRARY

Klinger v. Department of Corrections, 107 F.3d 609 (8th Cir. 1997). Women prisoners incarcerated at the Nebraska Center for Women (NCW) brought a § 1983 action alleging that the Department of Correctional Services (DCS) and several DCS officials violated their rights under the equal protection clause and Title IX by failing to provide equal educational opportunities for male and female prisoners in the state. They also alleged violation of their right of meaningful access to court because the DCS failed to provide an adequate law library at the facility. The district court found no Title IX violation but did find denial of access to court. The parties appealed. The appeals court affirmed in part and reversed and vacated in part. The appeals court found that comparison of educational opportunities available to female prisoners at NCW with educational opportunities available to men only at the Nebraska State Penitentiary was not sufficient to prove a violation of Title IX. The court also held that while the prisoners did show a complete and systematic denial of access to a law library or legal assistance, they failed to further show that any prisoner at NCW had suffered an actual injury or prejudice as the result of that denial of access. (Nebraska Center for Women)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Ladd v. Hannigan, 962 F.Supp. 1390 (D.Kan. 1997). An inmate brought a § 1983 action against correctional officials alleging denial of his right of access to the courts. The district court granted summary judgment for the defendants, finding that the inmate did not present evidence that he suffered prejudice in a particular suit specifically from the denial

of access to legal materials or help from a legal assistance attorney. The inmate had been given access to the library on 29 different days over a three month period, the librarian had copied over 1,100 pages for him in one month alone, and he filed over 40 suits in a five-year period. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
EXPERT WITNESS
COURT COSTS

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
FRIVOLOUS SUITS

Luedtke v. Gudmanson, 971 F.Supp. 1263 (E.D.Wis. 1997). A prisoner brought a § 1983 action against a warden, petitioning the court to proceed in forma pauperis. The district court held that the complaint was frivolous, warranting dismissal. The court found that the prisoner had no liberty interest in receiving vocational training and that the lack of vocational training does not impose an atypical and significant hardship on a prisoner. (Oshkosh Correctional Institution, Wisconsin)

U.S. District Court
AEDPA-Antiterrorism & Effective Death Penalty Act

Martin v. Jones, 969 F.Supp. 1058 (M.D.Tenn. 1997). A convicted murderer sought a writ of habeas corpus. The district court held that petitions for habeas corpus based on final judgments rendered before enactment of the Antiterrorism and Effective Death Penalty Act (AEDPA) must be filed within one year of enactment of the Act, and that the limitations period for habeas corpus petitions does not begin to run until both direct review and postconviction review have been exhausted. The district court dismissed the petition without prejudice rather then denying the petition. (Morgan County Regional Correctional Facility, Tennessee)

U.S. District Court
OPENING MAIL
LIMITING CORRESPONDENTS

Malsh v. Garcia, 971 F.Supp. 133 (S.D.N.Y. 1997). An inmate brought a civil rights action against prison employees arising from restrictions on his mail correspondence. The district court found that the employees did not violate the inmate's First Amendment rights to free speech and access to courts, but that fact issues precluded summary judgment for the employees on the inmate's due process claim because the inmate was disciplined for a mail correspondence infraction. The prison regulations permitted disciplinary action if an inmate submitted mail to a person on his "negative correspondence" list, prohibited "kiting" of mail, and allowed correspondence which violated the regulation to be opened and returned to the inmate. (Sullivan Correctional Facility, New York)

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

McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997). A state inmate brought a § 1983 action against a sheriff's department and officials for failing to serve a summons. The district court dismissed the action, and the appeals court affirmed and remanded. The appeals court set out procedures for handling prisoner and nonprisoner in forma pauperis complaints and appeals, finding that the inmate was not deprived of access to courts by the $14.60 charge the sheriff sought for serving the summons. The appeals court found that under the Prison Litigation Reform Act (PLRA), the only issue is whether an inmate pays the entire filing fee at the initiation of a proceeding or over a period of time under an installment plan. Under PLRA, prisoners are no longer entitled to a waiver of fees and costs. The court found that by filing a complaint of notice of appeal, a prisoner waives any objection to a fee assessment by the district court, and waives any objection to the withdrawal of funds from his trust account by prison officials to pay court fees and costs. (Ingham County Sheriff's Department, Michigan)

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

Mitchell v. Shomig, 969 F.Supp. 487 (N.D.Ill. 1997). A pro se inmate brought an action against prison officials alleging violation of his Eighth Amendment rights by exposing him to extreme cold while he was confined in a segregation cell. The district court found that the inmate's claim that officials exposed him to temperatures ranging from 32 to 50 degrees or less for an extended period asserted the existence of conditions sufficiently objectively harsh to state a claim for cruel and unusual punishment. The inmate attributed the lack of heat to the placement of his cell at the end of a gallery and improperly installed windows that allowed cold air to blow into the cell. The court refused to apply the exhaustion of administrative remedies requirement imposed by the Prison Litigation Reform Act (PLRA). (Stateville Correctional Center, Illinois)

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

Morgan v. Arizona Dept. of Corrections, 967 F.Supp. 1184 (D.Ariz. 1997). A prisoner brought a § 1983 action against a corrections department and its officers. The district court dismissed the case, finding that the prisoner, who did not file an initial grievance, failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). (Arizona State Prison Complex)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
FRIVOLOUS SUITS
COURT COSTS

Newlin v. Helman, 123 F.3d 429 (7th Cir. 1997). An inmate brought a § 1983 action against persons involved with a criminal prosecution against him. The district court found that the inmate had two strikes for the purposes of the Prison Litigation Reform Act (PLRA) based on a dismissed § 1983 action and a subsequent appeal. The court held that a prisoner who becomes ineligible under PLRA to continue litigating in forma pauperis and who then files additional suits or appeals yet does not pay necessary fees, loses the ability to file future civil suits. The court held that filing and docket fees owed by the inmate could be collected from the inmate's trust account using the mechanism of a statutory provision for handling partial fee payments. (Indiana)

U.S. Appeals Court
AEDPA-Antiterrorism & Effective Death Penalty Act

Nobles v. Johnson, 127 F.3d 409 (5th Cir. 1997). A defendant who was convicted of murder and sentenced to death petitioned for habeas corpus relief. The district court denied the petition. The appeals court affirmed, finding that the Antiterrorism and Effective Death Penalty Act (AEDPA) applied to his petition even though his motion for appointment of counsel and to proceed in forma pauperis was filed prior to the AEDPA effective date, because the actual petition was filed after the effective date. (Texas Department of Criminal Justice, Institutional Division)

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

Norton v. Dimazana, 122 F.3d 286 (5th Cir. 1997). A state inmate sued prison staff under § 1983 alleging that their deliberate indifference to his medical needs violated the Eighth Amendment. The district court denied the inmate's motion to proceed in forma pauperis and assessed a partial filing fee as required by the Prison Litigation Reform Act (PLRA). The inmate's claims were then dismissed as frivolous. The inmate appealed and was granted permission to proceed in forma pauperis on appeal. The appeals court assessed a $40 initial partial filing fee for the appeal and ordered the inmate to pay the remainder of the filing fee in installments pursuant to PLRA. The appeals court held that the PLRA's filing fees provisions do not deny prisoners constitutionally guaranteed access to courts because those provisions guarantee that lack of money will not preclude any inmate from pursuing a civil action or from appealing a civil or criminal judgment. According to the court, PLRA sufficiently guarantees that all prisoners will have access to the courts, regardless of their incomes. (Texas Department of Criminal Justice)

U.S. Appeals Court
VISITS
LEGAL ASSISTANCE

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 found that the denial of contact visits did not hinder the inmate's communication with his defense team or otherwise impair his ability to access the courts, noting that none of the variety of legal communications between the inmate and his attorney and their paralegals was being monitored by prison officials. 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. Appeals Court
PRIVILEGED CORRESPONDENCE

Oliver v. Fauver, 118 F.3d 175 (3rd Cir. 1997). An inmate brought a § 1983 action against state corrections officers and the district court entered summary judgment against the inmate. The appeals court affirmed, finding that the inmate was required to show that he was actually injured by the officers' alleged interference with his access to courts. The inmate had alleged that the officers had on three separate occasions returned his outgoing mail to him without mailing it, and on at least one occasion they had opened his outgoing mail. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. Appeals Court
AEDPA-Antiterrorism & Effective Death Penalty Act

Poland v. Stewart, 117 F.3d 1094 (9th Cir. 1997). A petitioner sought habeas corpus relief from his murder conviction and death sentence. The district court denied relief and the prisoner appealed. The appeals court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) did not apply to habeas corpus cases filed before the Act's effective date. The court also ruled that execution by lethal injection was not shown to be cruel and unusual punishment. (Arizona Department of Corrections)

U.S. Appeals Court
INDIGENT INMATES

Reynolds v. Wagner, 128 F.3d 166 (3rd Cir. 1997). Inmates brought a class action suit against a county prison and warden challenging the constitutionality of a program under which the prison charged inmates a small fee ($5) when they sought certain types of medical care. The district court entered a judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the program was not per se unconstitutional under the Eighth Amendment and did not violate the Eighth Amendment as implemented. The court found that

Spanish-speaking inmates did not receive deficient notice of the program due to the absence of a written Spanish translation of the program description. The program was explained in Spanish by officers and counselors to all Spanish-speaking inmates during orientation, the prison always had a Spanish-speaking employee on duty, and the medical department employed at least three nurses who were fluent in Spanish. The court held that the program did not violate procedural due process as the result of providing for fee deductions from an inmate's account even when the inmate did not sign an authorization form. The inmates had alleged that the program charged higher fees than the state Medicaid program, but the court found that the fees charged under Medicaid did not represent the maximum that could be constitutionally charged against a prisoner. According to the court, the failure of the prison to define the terms "chronic" and "emergency" which described in the inmate handbook conditions for which no fees would be assessed, did not make the program unconstitutionally vague. The court found no violation of the inmates' right of access to courts in response to the inmates' claim that the program reduced their funds available for legal mail and photocopying, where the inmates failed to establish actual or imminent interference with their access to court. (Berks County Prison, Pennsylvania)

U.S. District Court
LEGAL MATERIAL SEARCHES

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
FRIVOLOUS SUITS
PLRA-Prison Litigation Reform Act
TYPEWRITER

Schlicher v. Thomas, 111 F.3d 777 (10th Cir. 1997). A prisoner sued corrections officials and employees under § 1983 alleging they violated his due process and equal protection rights by denying him permission to purchase a typewriter with memory features. The district court entered dispositive orders against the prisoner and the prisoner appealed. The appeals court affirmed, finding that the Prison Litigation Reform Act (PLRA) applied to mandamus proceedings and to appeals that were dismissed prior to the enactment of PLRA. The appeals court held that the prisoner was barred from proceeding in forma pauperis, except with regard to appeals or petitions claiming he was in imminent danger of serious physical injury. The appeals court enjoined the prisoner from proceeding pro se without representation of a licensed attorney unless he first obtained permission to proceed pro se. The prisoner had previously filed 33 appeals and original proceedings, most of which were terminated or dismissed, five of which were dismissed as frivolous. (Kansas Department of Corrections)

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

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. District Court
TYPEWRITER

Spruytte v. Govorchin, 961 F.Supp. 1094 (W.D.Mich. 1997). A state inmate brought a pro se civil rights action against corrections officials claiming retaliation and violation of his right of access to courts. The court held that the inmate lacked standing to bring a civil rights claim based on the permissibility of word processors. The court held that the inmate's right of access to court did not create a right to bring an independent lawsuit to complain of noncompliance with state court orders in litigation concerning a prisoner's right to use and possess a certain word processor. The court also found that the inmate failed to state a claim for retaliation in violation of his First Amendment rights. This federal case came from a lengthy state court action where the inmate had sued to be allowed a particular word processor. By the time the inmate eventually prevailed on appeal the specific model of word processor was no longer being manufactured, provoking another series of disputes over whether the inmate could receive a particular replacement model. A department of corrections hearing officer rejected a replacement model that was delivered to the inmate, and the inmate eventually reached a settlement in state court stipulating that a third model of word processor was acceptable. The inmate filed this federal civil rights action challenging the hearing officer's decision to reject the replacement model, alleging violation of his right of access to the courts, and alleging retaliation for his first lawsuit in the matter. The federal court found that the inmate failed to allege a property interest in a particular word processor, as required to support a procedural due process claim. (Lakeland Correctional Facility, Michigan Department of Corrections)

U.S. Appeals Court
JAILHOUSE LAWYER
LAW LIBRARY
RETALIATION
WRITING MATERIALS

Thaddeus-X v. Blatter, 110 F.3d 1233 (6th Cir. 1997). Inmates filed a § 1983 action against prison officials, alleging they had retaliated against them for litigating a separate civil rights action against a warden. The district court granted summary judgment in favor of the defendants. The inmates appealed and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that genuine issues of material fact precluded summary judgment on whether an inmate required another inmate's assistance in order to have meaningful access to courts. The court found that the existence of a prison law library did not preclude an inmate's claim that prison officials retaliated against him for assisting another inmate with lawsuits, absent demonstration that the prison's policy of providing prisoners with law books requested by title was sufficient to provide the inmate with meaningful access to courts without the assistance of another inmate. The court also held that serving an inmate cold meals in retaliation for exercising his right of access to courts could be significant enough to be actionable under § 1983 and that genuine issues of material fact precluded summary judgment on this issue. The court found that summary judgment was also precluded for the inmate's claim that he was caused appreciable pain or injury because he was allegedly transferred without justification to a filthy unit which housed mentally ill inmates in retaliation for assisting another inmate with a lawsuit. (State Prison of Southern Michigan)

U.S. District Court
LAW LIBRARY
POSTAGE

U.S. v. Beckwith, 987 F.Supp. 1345 (D.Utah 1997). An indigent defendant who was detained prior to trial on bank robbery charges elected to proceed pro se. The district court held that the defendant was entitled to access to a satellite law library in the federal courthouse, with his hands free, for two hours per day for five consecutive days, and for two hours per day three days a week thereafter. The court noted that no special security problems regarding the inmate's hands had been shown, notwithstanding the contention that the inmate was a martial arts expert. The court also held that the detainee must be afforded unlimited mail access to court, standby counsel, and prosecution, unless he abused that privilege. (Salt Lake County Jail, Utah)

U.S. Appeals Court
FRIVOLOUS SUITS

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

U.S. District Court
PLRA-Prison Litigation Reform Act
IN FORMA PAUPERIS

West v. Macht, 986 F.Supp. 1141 (W.D.Wis. 1997). A person detained under Wisconsin's sexual predator law sought permission t o proceed in forma pauperis in an action seeking relief under § 1983. The district court held that the plaintiff was not a "prisoner" within the provisions of the Prison Litigation Reform Act (PLRA) which heightened restrictions on lawsuits filed by prisoners. The court granted leave to proceed in forma pauperis, finding that although he had been convicted of a criminal violation, his current detention was not part of the punishment for that crime but was instead a civil commitment imposed because of a judicial determination that he was a sexually violent person under Wisconsin law. (Wisconsin Resource Center, Winnebago)

U.S. Appeals Court
AEDPA-Antiterrorism & Effective Death Penalty Act

Williams v. Cain, 117 F.3d 863 (5th Cir. 1997). A state inmate filed a successive petition for habeas corpus and it was dismissed by the district court without prejudice pending certification by the court of appeals. The appeals court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) prior certification requirement does not apply to petitions filed in non-capital cases before AEDPA was enacted. (Louisiana)

U.S. District Court
PRIVILEGED COMMUNICATION
VISITS

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)

1998

U.S. Appeals Court
VISITS

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. Appeals Court
EXHAUSTION
PLRA-Prison Litigation Reform Act

Alexander v. Hawk, 159 F.3d 1321 (11th Cir. 1998). A prisoner brought a Bivens action against prison officials, claiming that enforcement of federal legislation restricting prisoners' access to magazines that are sexually explicit or which feature female nudity, violated his First Amendment rights. The district court dismissed the action for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The appeals court affirmed, finding that the prisoner was required to submit his claims for monetary and injunctive relief to an available prison grievance program, even if the relief offered by the program did not appear to be "plain, speedy, and effective." (Federal Bureau of Prisons)

U.S. District Court
PLRA-Prison Litigation Reform Act
FILING FEES

Anderson v. Sundquist, 1 F.Supp.2d 828 (W.D.Tenn. 1998). After having three suits against a prison dismissed as frivolous, a prisoner filed a fourth action. The district court held that the prisoner would be required to pay the $150 filing fee for the fourth action, even though the action would be immediately dismissed if the prisoner sought to proceed in forma pauperis. The court ruled that it could apply sanctions to the prisoner in addition to those provided for by statute. The district court held that the prisoner's privacy right in his cell was not violated by prison inspections. (West Tennessee High Security Facility)

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
LAW LIBRARY

Bausch v. Cox, 32. F.Supp.2d 1057 (E.D.Wis. 1998). An inmate brought a § 1983 action against a county alleging violation of his right of access to courts because the county maintained an inadequate law library at its jail. The district court dismissed the case, finding that the inmate's rights were not violated, absent any allegation of an actual injury. The inmate had alleged the following law library deficiencies: reporters containing state and federal case law are incomplete; library is "too small to accommodate the required law books and Shepard's citations and key digests" and other books; and the library has no typewriter space. The inmate alleged that because of these inadequacies he would be unable to file appellate briefs "when the time comes." (Milwaukee County House of Correction, Wisconsin)

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

Bishop v. Lewis, 155 F.3d 1094 (9th Cir. 1998). An inmate brought a § 1983 action alleging unhealthy air in a prison. The district court dismissed the complaint. The appeals court reversed and remanded, finding that a Prison Litigation Reform Act (PLRA) provision that required exhaustion of administrative remedies did not apply retroactively. The appeals court also found that the inmate had substantially complied with a court order to exhaust internal prison remedies. (Arizona)

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

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

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

Doe By and Through Doe v. Washington County, 150 F.3d 920 (8th Cir. 1998). A juvenile brought a § 1983 action against a county and a sheriff alleging that he was beaten, raped and tortured by other pretrial detainees when he was detained in the county jail. The district court jury awarded $8,000 incompensatory damages to the juvenile and the district court awarded $34,824 in attorney fees. The appeals court decided that the juvenile was not a "prisoner" at the time he filed suit and therefore the Prison Litigation Reform Act (PLRA) did not apply to his case so as to limit an award of attorneys' fees. (Washington County Detention Center, Arkansas)

U.S. District Court
LEGAL MATERIAL

Griffin v. DeTella, 21 F.Supp.2d 843 (N.D.Ill. 1998). A prisoner brought a § 1983 action against corrections officials alleging constitutional violations. The district court dismissed the action, finding that the prisoner failed to state due process and denial of access to court claims related to the loss of his legal papers. The court also found that the prisoner failed to state a claim against the officials for failing to take action following the loss of his papers. According to the court, a prisoner who suffers a loss of property as the result of a random, unauthorized act of a state employee, is entitled only to an adequate post-deprivation remedy for that loss. The prisoner had complained that some of his legal papers were missing after he was transferred from one correctional facility to another, but he did not allege that the papers were purposefully taken or destroyed. The court noted that none of the prisoner's claims were dismissed because of the loss, and he suffered only a delay and inconvenience. (Stateville Correctional Facility, Illinois)

U.S. Appeals Court
CIVIL SUIT

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
APPOINTED ATTORNEY

Johnson v. Howard, 20 F.Supp.2d 1128 (W.D.Mich. 1998). An inmate sought the appointment of counsel in a civil rights action he had filed in forma pauperis under § 1983. A magistrate judge denied the request and the inmate filed an objection. The district court held that the magistrate erred in denying the inmate's request and appointed counsel. According to the court, the inmate presented a colorable claim, and prison policies barred the inmate from searching for witnesses to support his claim but would permit an attorney to conduct an adequate investigation. (Ionia Maximum Correctional Facility, Michigan)

U.S. District Court
LEGAL MATERIAL
PRIVILEGED CORRESPONDENCE

Kalka v. Megathlin, 10 F.Supp.2d 1117 (D.Ariz. 1998). A prison inmate and his attorney brought a Bivens action against various officers and officials at a federal prison. The district court granted summary judgment for the defendants. The court held that the search of legal materials contained in the inmate's cell, outside the presence of the inmate, did not violate the inmate's constitutional rights. The court found that the officer who found a document which contained no owner identification which was unattended in a visiting room did not violate any right or privilege by looking at the document. The court also held that at the time of the incident, it was not clearly established that opening and examining mail addressed to an inmate to see if it was legal mail, and disclosing information obtained from the mail to law enforcement authorities, violated the rights of an inmate or an attorney. (FCI Tucson, Arizona)

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

Kerr v. Puckett, 138 F.3d 321 (7th Cir. 1998). A former inmate brought a civil rights action against prison officials, alleging that "brainwashing" of prisoners as part of substance abuse programs violated the Eighth Amendment. The district court ruled that the defendants were immune from liability and that the action was barred by the Prison Litigation Reform Act (PLRA). The appeals court affirmed, holding that the alleged "brainwashing" was not cruel and unusual punishment. The court also found that the PLRA provision barring prisoners from bringing suit for mental or emotional injury without a prior showing of physical injury did not apply to the suit filed by an inmate after he was released on parole. The inmate had previously filed suit protesting the religious components of some treatment programs, leading to a 1996 appeals court ruling that held that a prison violates the establishment clause of the First Amendment by making benefits such as parole contingent on receiving religious instruction and professing religious faith. (Wisconsin)

U.S. District Court
TRANSFER
LAW LIBRARY

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
COURT COSTS
PLRA-Prison Litigation Reform Act

Losee v. Maschner, 113 F.Supp.2d 1343 (S.D.Iowa 1998). An inmate brought an action against a warden alleging that the state was violating the provisions of the Prison Litigation Reform Act (PLRA) by improperly collecting payments from his inmate account to apply against his court filing fees. The district court denied the inmate's request for an order, finding that the PLRA provision requiring monthly payments if the amount in the prisoner's account exceeds ten dollars, requires only that the balance exceed ten dollars at some time during the month, and that the inmate was not entitled to a notice of the date on which the state would collect the monthly filing-fee from his account. (Iowa State Penitentiary)

U.S. Appeals Court
LAW LIBRARY
RETALIATION FOR LEGAL ACTION

McDonald v. Steward, 132 F.3d 225 (5th Cir. 1998). An inmate brought a § 1983 action against a prison library supervisor alleging that he intentionally denied the inmate access to the prison law library in retaliation for a lawsuit the inmate helped to file against personnel of the prison mail room. The district court entered judgment for the supervisor and the inmate appealed. The appeals court affirmed, finding that evidence did not support the inmate's claim. According to the court, on occasions when the inmate was denied library time he had failed to include his work hours on his request slips and once he ascertained his work hours and began placing them on his request slips, he was not denied access to the law library. (Michael Unit, Texas Department of Criminal Justice-Institutional Division).

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

Murray v. Dosal, 150 F.3d 814 (8th Cir. 1998). An indigent prisoner filed a petition under the All Writs Act alleging violation of his constitutional rights arising out of the refusal of a clerk of the court to file a civil rights complaint without a partial filing fee, as mandated by the Prison Litigation Reform Act (PLRA). The district court denied the petition and the appeals court affirmed. The appeals court held that the imposition of a filing fee did not unconstitutionally burden the prisoner's right of access to courts and the fee requirement was rationally related to legitimate government interests. The appeals court also held that the assessment of the filing fee against the prisoner's prison account did not violate the principles of procedural due process. (Minnesota)

U.S. Appeals Court
LEGAL MATERIAL

Nance v. Vieregge, 147 F.3d 589 (7th Cir. 1998). An inmate brought an action against a prison's property clerk, alleging that the clerk deprived him of his right of access to courts by misdirecting his possessions. The district court dismissed the case and the appeals court affirmed. The appeals court held that the inmate was not deprived of his right of access to courts by the loss of copies of his cases that he wanted to have when arguing in support of his motion for leave to withdraw his guilty plea. According to the court, the inmate did not lose any irreplaceable documents, and the inmate did not allege that his claim of actual innocence had been thwarted. (Graham Correctional Center, Illinois)

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

Patton v. Jefferson Correctional Center, 136 F.3d 458 (5th Cir. 1998). A state prisoner brought a § 1983 action challenging his placement in administrative segregation. The appeals court held that the unappealed dismissal of one of the prisoner's prior § 1983 actions was a countable strike under the Prison Litigation Reform Act (PLRA). The appeals court also held that the dismissal of the prisoner's prior action that asserted both a frivolous § 1983 and an unexhausted habeas corpus claim was a countable strike under PLRA. The appeals court denied the prisoner's motion to proceed in forma pauperis and dismissed the case. (Jefferson Parish Correctional Center, Gretna, Louisiana)

U.S. District Court
LEGAL MATERIALS
LEGAL ASSISTANCE

Perez v. Metropolitan Correctional Center Warden, 5 F.Supp.2d 208 (S.D.N.Y. 1998). A prison inmate sought monetary damages from prison officials in a Bivens suit. The district court dismissed the case but the case was remanded on appeal on the limited question of whether the officials' alleged loss or destruction of the inmate's legal papers relating to his criminal conviction violated his constitutional right of access to courts to challenge his sentence. On remand, the district court granted summary judgment in favor of the prison officials, finding that the provision of legal counsel was sufficient to establish meaningful access to courts. The court also found that the inmate failed to establish that he was provided with ineffective counsel. The court noted that the inmate did not establish any injury since he did not allege that his attorney lacked necessary legal documentation or that the attorney was unable to raise the inmate's legal claims on appeal. (Metropolitan Correctional Center, New York)

U.S. Appeals Court
WORD PROCESSOR

Peterson v. Shanks, 149 F.3d 1140 (10th Cir. 1998). A state prison inmate brought a § 1983 action alleging violation of his right of access to the courts. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed, finding that removal of the inmate's word processor did not support an access to court claim. The inmate alleged that removal of the word processor interfered with his filing of a reply brief in a state civil action, but the court granted the inmate ample time to allow the inmate to complete the brief without the word processor and the inmate chose not to do so. (Penitentiary of New Mexico)

U.S. District Court
AEDPA-Antiterrorism & Effective Death Penalty Act
FILING FEES

Richmond v. Stigile, 22 F.Supp.2d 476 (D.Md. 1998). An inmate brought a § 1983 action against prison officials alleging that deductions from his inmate account, assessed under the Prison Litigation Reform Act (PLRA), violated his right to due process and deprived him of basic hygienic needs. The district court held that the filing fees were properly assessed to the inmate and that even if prison officials had not complied with the PLRA provisions in deducting funds from the inmate's account, the inmate could not prevail on his due process claim because he failed to demonstrate that the deprivation occurred as the result of an established state procedure rather than from an unauthorized failure of state agents to follow an established state procedure. The court found that the inmate's claim that he was deprived of basic hygiene articles because of the filing fee deductions did not rise to the level of an Eighth Amendment deprivation because the deprivation was not sufficiently lengthy or serious. (Western Correctional Institution, Maryland)

U.S. District Court
ASSISTANCE
JAILHOUSE LAWYER

Sizemore v. Lee, 20 F.Supp.2d 956 (W.D.Va. 1998). A habeas corpus action was brought by a prisoner who was disciplined for helping other inmates prepare legal pleadings after he had been ordered by corrections officials to stop. The district court dismissed the petition, finding that it was constitutional for the officials to order the prisoner to cease and desist writ writing activities on behalf of other inmates. The court noted that ordering one inmate to stop assisting others did not necessarily violate the other inmates' right of access to court because they could seek assistance from others, including counselors or family members. (Marion Correctional Treatment Center, Virginia)

U.S. Supreme Court
AEDPA-Anti-Terrorism & Effective Death Penalty Act

Stewart v. Martinez-Villareal, 118 S.Ct. 1618 (1998). A habeas corpus petitioner under sentence of death moved to reopen his first habeas proceeding for consideration of his claim that he was not competent to be executed. The petition was originally dismissed without prejudice as premature. The district court held that under the Antiterrorism and Effective Death Penalty Act (AEDPA) it lacked jurisdiction to consider the claim. The Supreme Court held that the petitioner's claim was not a "second or successive" application under AEDPA and that he was entitled to hearing in district court. (Arizona Department of Correction)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
FILING FEES
DUE PROCESS

Tucker v. Branker, 142 F.3d 1294 (D.C. Cir. 1998). A state prisoner filed a § 1983 action against a correctional officer and the President and Vice President of the United States. The district court granted the inmate permission to proceed in forma pauperis but dismissed the complaint. The prisoner appealed but refused to comply with the provisions of the Prison Litigation Reform Act (PLRA), challenging the constitutionality of the PLRA's filing fee provision. The district court affirmed the lower court dismissal of the case, finding that the filing fee provision does not deny prisoners effective access to the courts nor prisoners' due process rights. The appeals court also held that the PLRA provision did not violate equal protection. (District of Columbia)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
FILING FEES
IN FORMA PAUPERIS

U.S. v. Garcia, 135 F.3d 951 (5th Cir. 1998). After a judgment was entered in favor of prison officials in an inmate's civil rights action, the inmate appealed and applied to proceed in forma pauperis. The inmate was ordered to pay a filing fee in installments but refused to sign a consent form authorizing withdrawals from his trust account. The appeals court held that a form authorizing the corrections department to withdraw from the inmate's trust fund account 20% of each deposit made to the account until the full amount of the federal appellate filing fee was satisfied did not violate the Prison Litigation Reform Act (PLRA), although the form did not prohibit withdrawals from the account if its balance was less than $10. (Texas Department of Criminal Justice)

U.S. District Court
LEGAL MATERIAL

Warburton v. Underwood, 2 F.Supp.2d 306 (W.D.N.Y. 1998). A prisoner was granted permission to proceed in forma pauperis in his § 1983 action. The district court held that a delay of 14 days in serving the prisoner with court papers for a pending action did not deny him access to court, because the Constitution requires no more than reasonable access to the courts. According to the court, the prisoner's right to privacy was not violated by the actions of a prison employee who appeared at a deposition of the prisoner and introduced herself to others, allegedly with the intent to "inflame" the prisoner. The court noted that the prisoner had only a limited right to privacy and that the employee did not make herself privy to confidential and privileged information. (Groveland Correctional Facility, New York)

U.S. District Court
SEARCHES

Warburton v. Goord, 14 F.Supp.2d 289 (W.D.N.Y. 1998). An inmate sued corrections officials alleging violation of his rights with regard to verbal abuse and the search of his legal materials. The district court dismissed the case, finding that the inmate's claim that he was verbally abused, taunted and threatened by prison officers was not actionable under § 1983 absent some physical injury. The court also found that prison officers' search of the inmate's law library desk, memory typewriter, and crate of legal materials, without more, was not a violation of the inmate's limited right to privacy. (Groveland Correctional Facility, New York)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

Weiler v. Purkett, 137 F.3d 1047 (8th Cir. 1998). An inmate challenged the confiscation of his package in a civil rights action against a prison superintendent and mail room supervisor, seeking six million dollars in damages. The district court denied summary judgment for the defendants but the appeals court reversed and remanded. The inmate

challenged two prison rules: one allows inmates to receive packages only from attorneys and approved vendors; the other affords special treatment for "privileged mail" but limits this category to correspondence from judges, attorneys, courts, or government officials. The inmate had received a package marked "legal materials" that was mailed by his son and it was not delivered to the inmate. The appeals court held that the prison regulation did not violate the inmate's right of access to courts or his due process rights. (Farmington Correctional Facility, Missouri)

U.S. District Court
RESTRAINTS

Williams v. Calderon, 48 F.Supp.2d 979 (C.D.Cal. 1998). An offender sentenced to death sought habeas corpus relief. The district court granted the petition in part, finding that if the basis for the trial court's decision to shackle the offender during his trial is not clear from the record, an evidentiary hearing must be held to determine whether the shackling was justified. The court did not support the offender's allegations that his privacy rights were violated while he was in jail awaiting trial. (California State Prison at San Quentin)

U.S. Appeals Court
LAW LIBRARY

Wilson v. Blankenship, 163 F.3d 1284 (11th Cir. 1998). A federal pretrial detainee brought an action under § 1983 and Bivens claiming a federal marshal, wardens of a city jail and corrections officers subjected him to unconstitutional conditions of confinement in a city jail. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the lack of a law library at the city jail did not prevent the detainee from pursuing civil rights claims or his criminal appeal to the extent that his right of access to courts was violated. The appeals court agreed that the wardens were entitled to qualified immunity because they did not have the authority or ability to provide the jail with a law library or exercise area; according to the court, their duty was to administer the jail pursuant to an agreement with the Marshals Service, which was aware of the lack of a law library and exercise space. The appeals court also affirmed the grant of qualified immunity to the marshal because he did not violate clearly established law by transporting the detainee to the city jail under the terms of an intergovernmental agreement. The court noted that the detainee's stay at the facility was relatively brief. (Montgomery City Jail, Alabama)

U.S. District Court
LAW LIBRARY
ACCESS TO ATTORNEY

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. According to the court, the inmate's allegations that the county jail failed to have an adequate collection of legal materials and its prohibition against defendants receiving incoming legal publications stated a claim that would survive dismissal at the pleading stage. The inmate alleged that the county had a blanket policy of prohibiting inmates from receiving any type of publication through the mail. The court also found that a pro se inmate could not claim violation of attorney-client confidentiality. The inmate had complained that he was forced to conduct attorney-client consultations in a room equipped with a two-way intercom speaker that allowed jail personnel to breach confidentiality. (Carroll County Jail, Indiana)

U.S. District Court
PRIVILEGED COMMUNICATION

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. The court held that even if a county jail employee hid the prisoner's outgoing mail rather than delivering it, the action did not violate the Fourth Amendment because another employee found the mail and ensured that it was mailed, so that the prisoner suffered no harm. The court found no constitutional violation of access to court because a jail official required the prisoner to hold conversations with his attorney in a room equipped with a two-way intercom system because the official did not actually listen to the conversation but merely stood in a control room. But the court found triable issues of fact regarding whether the prisoner suffered an injury when a jail employee handcuffed him immediately after an escape attempt. (Tippecanoe County Jail, Indiana)

1999

U.S. District Court
RECORDS

Advocacy Center v. Stalder, 128 F.Supp.2d 358 (M.D.La. 1999). An advocacy group for the rights of mentally ill persons, formed pursuant to the Protection and Advocacy for Mentally Ill Individuals Act (PAMII Act), sued a state prison seeking release of an inmate's mental health records which were needed in connection with an investigation of the inmate's claims of mistreatment. The district court issued a temporary injunction that provided the records. The district court held that surrender of the records did not moot the action because the situation was capable of arising in other cases. The district court entered judgment for the advocacy

group and entered a permanent injunction in response to the unwillingness of the state to modify its policy. The court found that a state law that bars the release of prison inmate records until they have been reviewed by a state court judge violated the advocacy group's right to communicate with the population it was created to serve and the inmate's right of access to court. (David Wade Correctional Center, Louisiana)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

Boswell v. Mayer, 169 F.3d 384 (6th Cir. 1999). An inmate brought a civil rights action against a prison warden and prison employee, alleging that they violated his rights by opening a piece of his mail from the state attorney general's office outside of his presence. The district court dismissed the suit and the appeals court affirmed. The appeals court held that the prison policy, which treated mail from the attorney general as legal mail if certain conditions were met, did not violate the inmate's First Amendment rights. The policy designated attorney general mail as legal mail if the envelope contained the return address of a licensed attorney and if the envelope had markings that warned of its privileged contents. If both conditions were met, the inmate was entitled to request that the prison mail room open the letter in his presence. The letter to the inmate was not marked confidential or privileged by the sender, and was therefore opened outside the presence of the inmate. (Baraga Maximum Security Correctional Facility, Michigan)

U.S. District Court
LEGAL MATERIALS

Caldwell v. Hammonds, 53 F.Supp.2d 1 (D.D.C. 1999). A prisoner brought a § 1983 action for damages for injuries allegedly suffered. The district court held that the prisoner failed to state a claim with his allegations of limited access to legal materials because he did not allege a specific injury as a result. (Cell Block 3, Maximum Security Facility, District of Columbia Department of Corrections, Lorton, Virginia)

U.S. Appeals Court
COURT COSTS
FILING FEES

Chriceol v. Phillips, 169 F.3d 313 (5th Cir. 1999). A state prisoner brought a § 1983 action against prison officials alleging violation of his right to free exercise of religion and denial of his access to the courts. The district court granted summary judgment for the officials and the appeals court affirmed. The court held that denial of the prisoner's request to withdraw money from his prison account to pay court costs to institute a civil rights action against them did not constitute denial of his right to court access, where there was no evidence of any actual injury in that the prisoner's fee was paid and the complaint was successfully filed. (Winn Correctional Center, Louisiana)

U.S. Appeals Court
LEGAL MATERIALS

Cosco v. Uphoff, 195 F.3d 1221 (10th Cir. 1999). Prison inmates brought a civil rights complaint against several employees of a state corrections department claiming deprivation of property without due process and denial of access to the courts. The district court dismissed the complaint and the inmates appealed. The appeals court affirmed, finding that the *Hewitt* methodology does not apply to property and liberty interest claims arising from prison conditions. The appeals court held that the language in prison regulations governing what items inmates could keep in their cells did not create a property interest or entitlement. The court also found that new regulations limiting the amount of hobby and legal material that prisoners could keep in their cells did not create a property interest. (Wyoming State Penitentiary)

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

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 Corr. Institution, Wisconsin)

U.S. District Court
IN FORMA PAUPERIS
FILING FEES

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 Eigth Amendment rights. The court ordered jail officials to withdraw monthly payments equal to 20% of all deposits credited to the inmate's account during the previous month to be paid to the clerk of courts, when the amount in the account exceeds $10, until the entire $150 court filing fee is paid. (Shelby County Correctional Center, Tennessee)

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

Harris v. Ford, 32 F.Supp.2d 1109 (D.Alaska 1999). Defendants in a state prison civil rights action asked the court to vacate an order directing service and response. A federal magistrate denied the order and the defendants appealed. The district court affirmed, finding that the court's duty to screen prisoner complaints does not require it to do such screening in writing for the defendants. The court also held that the prisoner was not required to exhaust administrative remedies pursuant to the requirements of the Prison Litigation Reform Act (PLRA) because his claim did not relate to prison conditions. (Alaska Department of Corrections)

U.S. District Court
ATTENDANCE-COURT

Hawks v. Timms, 35 F.Supp.2d 464 (D.Md. 1999). A federal prisoner housed in Pennsylvania sought permission to personally attend a civil rights trial, in an action he filed against arresting police officers in Maryland, at the government's expense. The district court held that the court would permit the prisoner to attend the three-day trial because the

viability of his claim against the arresting officers would depend entirely on his own testimony and credibility, and the costs associated with his attendance were not excessive. (Federal Penitentiary, Lewisburg, Pennsylvania)

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

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

U.S. Appeals Court
LAW LIBRARY
RETALIATION

Jones v. Greninger, 188 F.3d 322 (5th Cir. 1999). A prisoner brought a § 1983 action against prison officials alleging that they engaged in a conspiracy to deny his constitutional rights by limiting his right of access to courts in retaliation for his filing of various grievances. The district court dismissed all claims except for one retaliation claim against one official. The appeals court affirmed. The appeals court also held that limiting the prisoner to five hours of library time a week as the result of a job reassignment did not violate his right of access to court. (Federal Correctional Institute at Seagoville, Texas)

U.S. District Court
FRIVOLOUS SUITS
INDIGENT INMATES
FILING FEES
AEDPA-Antiterrorism & Effective Death Penalty Act

Luedtke v. Bertrand, 32 F.Supp.2d 1074 (E.D.Wis. 1999). When a magistrate recommended denial of his petition to proceed in forma pauperis with a prison civil rights action, a prisoner objected. The federal district court rejected the objections, finding that since the prisoner created his own "destitution," he could not claim an exception to the Prison Litigation Reform Act (PLRA). The court held that because the prisoner had exhausted his trust account because of filing "serial lawsuits of an egregiously frivolous nature," he could not claim an exception under PLRA. The court ruled that the prisoner could not go ahead with any additional civil rights cases until filing fees for his prior cases were paid in full. (Wisconsin)

U.S. Supreme Court
ATTORNEY FEES

Martin v. Hadix, 119 S.Ct. 1998 (1999). After prevailing in their § 1983 suit challenging their conditions of confinement, prisoners filed fee petitions for compliance monitoring. The district court applied the Prison Litigation Reform Act (PLRA) to limit fees earned after PLRA's enactment, but not to limit those earned before. The appeals court affirmed in part and reversed in part, holding that PLRA's fee limitation did not apply to cases pending on its enactment date. The United States Supreme Court affirmed in part and reversed in part, holding that PLRA limits attorney fees for postjudgment monitoring services performed after PLRA's effective date, but does not limit the fees for monitoring before that date. (Michigan Department of Corrections)

U.S. District Court
FRIVOLOUS SUIT
ATTORNEY FEE

McGlothlin v. Murray, 54 F.Supp.2d 629 (W.D.Va. 1999). The issue of whether to reduce an attorney fee award against a plaintiff prison inmate who brought a frivolous § 1983 action against prison officials and a prison chaplain was remanded by the appeals court. The district court held that reduction of the award from $28,719.25 to $900 was appropriate in light of the plaintiff's inability to pay and out of a concern that a large award would discourage other inmates who had viable claims. The plaintiff inmate had alleged that the prison officials and the prison chaplain discriminated against him because of his Islamic religion. (Dillwyn Correctional Center, Virginia)

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

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 Department of Criminal Justice)

U.S. Appeals Court
JAILHOUSE LAWYER

Nicholas v. Miller, 189 F.3d 191 (2nd Cir. 1999). An inmate brought a pro se § 1983 action against state prison officials alleging that they violated his constitutional rights when they denied his request to form a prisoners legal defense center. The district court dismissed the complaint as frivolous but the appeals court vacated the decision and remanded with case with instructions. The appeals court held that genuine factual issues as to the reasonableness of the denial precluded summary judgment, but that the officials were entitled to qualified immunity because the inmate's First Amendment associational right to form an inmate legal services

organization was not clearly established at the time of the officials' denial. The inmate had earned a college degree and had concentrated on the study of law while confined. He had practiced as a jailhouse lawyer while at the facility. (Woodbourne Correctional Facility, New York)

U.S. Appeals Court
LEGAL MAIL

Powells v. Minnehaha County Sheriff Dept., 198 F.3d 711 (8th Cir.1999). A Black jail inmate filed five separate actions under § 1983 alleging violations of his constitutional rights. The district court dismissed all five actions and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the Black inmate stated an equal protection claim based on allegations that he and his white cellmate, who followed the same procedures in requesting an extra mattress and extra blanket, were similarly situated but that a defendant officer, for racial reasons, denied the Black inmate's request for the items but granted the white inmate's request. The appeals court also held that the inmate stated a constitutional claim by alleging that officers opened his "legal mail" when he was not present. (Minnehaha County Jail, South Dakota)

U.S. Appeals Court
RESTRAINTS

Rhoden v. Rowland, 172 F.3d 633 (9th Cir. 1999). A federal prisoner challenged his conviction on the grounds that the court should not have shackled him in view of the jury. The state appeals court affirmed his conviction and the federal district court denied relief. The federal appeals court reversed and remanded, finding that the offender's due process rights were violated because the jury saw the shackles, the case involved violent crimes, and the evidence was disputed. The appeals court had previously remanded the case to the district court which concluded that the shackles were visible to the jury but that the actual prejudicial effect on jury deliberations was insufficient to warrant habeas relief. The appeals court again remanded the case, instructing the district court to grant the habeas petition. (California)

U.S. District Court
LAW LIBRARY

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
TYPEWRITER

Roberts v. Cohn, 63 F.Supp.2d 921 (N.D.Ind. 1999). Prisoners brought a § 1983 action against a prison and prison officials alleging violation of their First and Fourteenth Amendment rights by a prison policy of prohibiting typewriters and word processors. The district court granted summary judgment in favor of the defendants. The court held that although inmates have a right to meaningful access to courts, this access is satisfied by providing basic materials, such a pens and paper, for the preparation of legal materials. According to the court, prison inmates do not have a constitutional right to use or possess typewriters and word processors. The court found that the policy, which allows prisoners to keep typewriters or word processors that they currently own, but prohibits prisoners from purchasing new machines, did not discriminate on the basis of suspect classifications such as race or religion. The court noted that the prisoners did not present evidence that they failed a course or program of study due to their inability to turn in typewritten work, and therefore did not show any violation of a liberty interest that they had in possessing a typewriter or word processor. (Indiana State Prison)

U.S. District Court
SELF-INCRIMINATION

Searcy v. Simmons, 68 F.Supp.2d 1197 (D.Kan. 1999). An inmate brought a § 1983 action against correctional officials seeking a preliminary injunction to compel the officials to allow him to participate in a treatment program for sex offenders without conditions. The district court denied the inmate's request, finding that the policy of reducing the inmate's privileges because he refused to fill out an "admission of responsibility" form did not violate his privilege against self-incrimination because the inmate retained the right to choose whether to enter the program and the loss of privileges did not rise to the level of compulsion. The form requires the inmate to list all past behavior that may have constituted a sex offense, whether the inmate was ever arrested, charged or convicted as a result of the conduct. The court also held that the condition which required the inmate to submit to a plethysmograph examination which used explicit sexual material did not violate the inmate's religious freedoms. (Sexual Abuse Treatment Program, Hutchinson Correctional Facility, Kansas)

U.S. District Court
LEGAL ASSISTANCE

Southern Christian Leadership v. Supreme Court, 61 F.Supp.2d 499 (E.D.La. 1999). Community organizations, law school professors, student groups and others brought a § 1983 action alleging that a state supreme court rule that imposed additional regulations on the operation of law student clinics throughout the state violated their First and Fourteenth Amendment rights. The district court dismissed the case. The court held that the regulations did not violate the constitutional rights of community organizations or the freedom of speech and association rights of individual donors. The court also found that the regulations did not violate students' rights to

freedom of speech, association or to petition the government for redress of grievances. The court noted that even in the case of prisoners, there is no constitutional right to legal assistance, let alone counsel, that exists without some concrete, particularized injury. The court found that the regulations, which restricted law students' freedom to appear in a representative capacity on behalf of clients whom law clinic lawyers or staff persons had solicited, were reasonably related to the state's legitimate interest in protecting the public and monitoring professional ethics. (Louisiana Supreme Court Rule XX, "Limited Participation of Law Students in Trial Work")

U.S. Appeals Court
COURT COSTS
PRIVILEGED COR-RESPONDENCE
PLRA-Prison Litigation Reform Act

Talley-Bey v. Knebl, 168 F.3d 884 (6th Cir. 1999). State prisoners brought a § 1983 action against state corrections officials alleging denial of their access to the courts and cruel and unusual punishment. The district court granted summary judgment for the officials and awarded costs. The appeals court held that the officials' refusal to accept outgoing legal mail from a prisoner or to forward a grievance form from one prisoner to another did not violate access to court or Eighth Amendment rights. The appeals court found that taxing of costs against prisoners under the provisions of the Prison Litigation Reform Act (PLRA) was proper, regardless of their ability to pay, and that the costs imposed were to be equally divided among all participating prisoners. (Oaks Correctional Facility, Michigan)

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

Tapia-Ortiz v. Winter, 185 F.3d 8 (2nd Cir. 1999). A prisoner brought a pro se action against 20 circuit judges of the Second Circuit Court of Appeals and other officials, alleging they conspired to obstruct justice in violation of the Racketeer Influenced and Corrupt Organization Act (RICO). The district court dismissed the case and the appeals court affirmed, holding that the complaint was properly dismissed as frivolous. (United States Second Circuit Court of Appeals)

U.S. Appeals Court
JAIL HOUSE LAWYER
RETALIATION

Thaddeus-X v. Blatter, 175 F.3d 378 (6th Cir. 1999). State inmates brought a § 1983 suit against corrections officers. The federal district court granted summary judgment for the officers and the inmates appealed. The appeals court affirmed in part, vacated in part, and remanded the case The appeals court held that the officers were the proper defendants to the retaliation claim and that the inmate who assisted a litigating inmate in filing an action was engaged in "protected conduct" for the purposes of the retaliation claim. The two inmates had signed a "Legal Assistance Request and Agreement" which was approved by an official prison policy. An officer allegedly told the inmate that he would have him moved to an area of the prison used to house mentally ill inmates because he assisted another inmate to file a suit. The court also found that a fact issue existed as to whether the alleged harassment and cold meals established the adverse action element of the inmate's retaliation claim, precluding summary judgment.

U.S. Appeals Court
ACCESS TO COURT

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. Appeals Court
LAW LIBRARY

U.S. v. Taylor, 183 F.3d 1199 (10th Cir. 1999). A defendant convicted by a jury appealed his conviction. The appeals court held that the defendant had knowingly and intelligently waived his right to counsel, despite the purported condition that the defendant would have access to law library, which he alleged was never provided. (Oklahoma)

2000

U.S. Appeals Court
LEGAL ASSISTANCE
LEGAL MATERIAL
RETALIATION FOR LEGAL ACTION

Allah v. Seiverling, 229 F.3d 220 (3rd Cir. 2000). A prisoner filed a complaint alleging he was being kept in administrative segregation in retaliation for filing civil rights lawsuits against prison officials, and that he was denied meaningful access to the courts. The district court dismissed the complaint for failure to state a claim and the prisoner appealed. The appeals court vacated and remanded, finding that the prisoner stated a claim of retaliation and denial of access to the courts by alleging that his placement in administrative segregation resulted in reduced access to phone calls and inadequate access to legal research materials and assistance. (State Correctional Institution, Greene, Pennsylvania)

U.S. District Court
PRIVILEGED CORRES.

Ballance v. Young, 130 F.Supp.2d 762 (W.D.Va. 2000). A state prisoner brought a pro se federal civil rights suit against prison officials, arising out of their seizure of several items of his personal property. The district court held that the prisoner had no reasonable expectation of privacy in his cell that would make seizure of a letter from his cell a Fourth Amendment violation that could be addressed in a § 1983 suit. The court found that the decision by officials to confiscate the prisoner's scrapbook and clippings, in accordance with a prison regulation that prohibited such items, was reasonable in light of security concerns that the metal parts of

scrapbooks could be used as weapons and that razors and other contraband could be hidden in the clippings or scrapbooks, and in light of the time-consuming or extreme nature of other alternatives, such as x-raying cells. The court noted that the officials did not need reasonable suspicion to search prisoner cells as part of their policy of performing random searches. The court also held that the prisoner was afforded sufficient post-deprivation remedies to satisfy any due process concerns arising from the seizure of an attorney's letter that contained hair samples and, allegedly, two money orders, where the inmate did receive notice of a disciplinary hearing held under the prison regulation forbidding abuse of mail. (Wallens Ridge State Prison, Virginia)

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

Booth v. Churner, 206 F.3d 289 (3rd Cir. 2000). A prisoner brought a § 1983 action alleging excessive use of force by prison officers and the district court dismissed the action for failure to exhaust administrative remedies. The appeals court affirmed, finding that the prisoner was required to exhaust the administrative remedies available to him even though the state's inmate grievance process could not provide him with the money damages he sought. (State Correctional Institute at Smithfield, Pennsylvania)

U.S. District Court
RIGHT TO COUNSEL

Dabney v. Anderson, 92 F.Supp.2d 801 (N.D.Ind. 2000). A prisoner filed a petition for a writ of habeas corpus challenging his disciplinary sentence of three years in disciplinary segregation. The district court denied the petition, finding that the three years did not violate a liberty interest subject to due process protection and that the prisoner did not have a right to either retained or appointed counsel in a prison disciplinary hearing. (Indiana State Prison at Michigan City)

U.S. Appeals Court
LAW LIBRARY

Felder v. Johnson, 204 F.3d 168 (5th Cir. 2000). An inmate sought habeas corpus relief and his petition was denied by the district court as time-barred. The appeals court affirmed, finding that the alleged inadequacies of the inmate's prison law library were not "rare and exceptional" circumstances that warranted extension of the time to file. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
ACCESS TO ATTORNEY
ACCESS TO COURT

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. Appeals Court
SELF INCRIMINATION
RIGHT TO COUNSEL

McCall v. Pataki, 232 F.3d 321 (2nd Cir. 2000). A state prisoner brought a pro se § 1983 action against state officials alleging that he was denied his constitutional rights during parole hearings. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prisoner was not entitled to warnings on the right against self-incrimination or to the assistance of counsel in a parole hearing. The court noted that even though the prisoner was convicted by a jury and did not plead guilty to his crime of conviction, he could not be prosecuted again for the same crime and had no right to refuse to answer with respect to that crime. (New York Board of Parole)

U.S. District Court
PLRA-Prison Litigation Reform Act
FILING FEES

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
RETALIATION

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 for preparing legal papers. (Woodbourne Correctional Facility, New York)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
IN FORMA PAUPERIS

Page v. Torrey, 201 F.3d 1136 (9th Cir. 2000). A detainee who was civilly committed to a state hospital under California's Sexually Violent Predators Act applied to file an in forma pauperis § 1983 action. The district court denied the application and the detainee appealed. The appeals court reversed and remanded, finding that a detainee who was civilly committed to a state hospital was not a "prisoner" within the meaning of the of the Prison Litigation Reform Act (PLRA) and that he ceased being a prisoner when he was released from custody by the California Department of Corrections. (California's Sexually Violent Predators Act)

U.S. District Court
AEDPA- Antiterrorism & Effective Death Penalty Act
LAW LIBRARY

Stokes v. Miller, 216 F.Supp.2d 169 (S.D.N.Y. 2000). An offender convicted of second degree felony murder petitioned for habeas corpus relief. The district court denied the petition, finding that the alleged "nightmare" experience of the offender when he used a prison law library did not warrant equitable tolling of the one-year limitation period under the provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA). (New York)

U.S. District Court
PHOTOCOPYING

Scott v. Kelly, 107 F.Supp.2d 706 (E.D.Va. 2000). A prisoner brought a pro se § 1983 action alleging denial of access to court. The district court dismissed the case, finding that the prisoner's failure to specify how corrections officials' alleged violation of his photocopying rights impeded his work on a habeas corpus petition, regardless of whether a photocopying violation was unreasonable. The prisoner had alleged that officials denied him access to photocopying services in retaliation for his filing of complaints against them. (Deep Meadows Corrections Center, Virginia)

U.S. Appeals Court
LAW LIBRARY

Zimmerman v. Tribble, 226 F.3d 568 (7th Cir. 2000). An inmate brought a pro se civil rights action against state prison officials complaining about prison conditions. The district court dismissed the complaint under the Prison Litigation Reform Act (PLRA) and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that the inmate did not state a claim for violation of his First Amendment rights by alleging his mail was delivered in an untimely manner where he alleged only one instance in which his mail was delayed. But the appeals court found that the inmate stated a claim against a library supervisor for retaliation in denial of his access to a library. The inmate had filed a grievance against the library supervisor for allegedly denying him library access to prepare pro se for a criminal trial and the supervisor then denied him any access to the library. (Wabash Valley Corr. Ctr., Indiana)

2001

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
IN FORMA PAUPERIS

Abdul-Akbar v. McKelvie, 239 F.3d 307 (3rd Cir. 2001). A prisoner moved for leave to file a § 1983 complaint in forma pauperis and the district court denied the motion. The appeals court affirmed, finding that the three strikes rule of the Prison Litigation Reform Act (PLRA), interpreted so as to allow invocation of the imminent danger exception only when the danger exists at the time of filing, did not violate equal protection. The court noted that the prisoner had previously filed 180 civil rights or habeas corpus claims, and the purpose of PLRA was to place economic incentives that would prompt prisoners to "stop and think" before filing a civil complaint. (Sussex Correctional Institute, Delaware)

U.S. Appeals Court
TELEPHONE

Arsberry v. Illinois, 244 F.3d 558 (7th Cir. 2001). Prison and jail inmates, inmates' families, and a public-interest law firm brought an action against a state, state agencies and officials, and telephone companies, challenging the practice by which prisons and jails each granted one telephone company the exclusive right to provide inmate telephone service in exchange for a portion of the revenues generated. The suit was brought under § 1983, the Sherman Act, and state law. The federal district court dismissed the case for lack of jurisdiction. The appeals court modified and affirmed the district court decision. According to the appeals court, the exorbitant telephone rates resulting from the challenged practice did not violate the First Amendment and the practice did not result in unconstitutional takings. The court also found that the practice did not violate anti-trust laws, and that the state officials responsible for the practice were entitled to qualified immunity from damages asserted under § 1983, given the "novelty" of the action. (Illinois)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
ACCESS TO ATTORNEY
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 Dept. of Correction)

U.S. Appeals Court
EXPERT WITNESS

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 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)

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

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

U.S. District Court
FRIVOLOUS SUITS

Brashear v. Simms, 138 F.Supp.2d 693 (D.Md. 2001). A state inmate challenged policies banning smoking and sale of tobacco products and possession of tobacco by inmates in state prisons. The district court dismissed the action as frivolous, finding it did not violate equal protection. (Maryland Department of Public Safety and Correctional Services)

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

Curry v. Scott, 249 F.3d 493 (6th Cir. 2001). African-American inmates at a state prison sued corrections officers and supervisors under § 1983 alleging violation of their Eighth Amendment rights. Defendants' motions to dismiss and for summary judgment were granted in part by the district court and the inmates appealed. The appeals court affirmed in part, reversed in part and remanded. The inmates had alleged that a correctional officer assaulted them on two different occasions. The appeals court held that an issue of fact regarding whether the officer's supervisors actually knew he posed a substantial risk of serious harm to prison inmates precluded summary judgment for the supervisors. The court noted that the officer's employment record contained sufficient references to his propensity to discriminate against and abuse African-American prisoners to create an issue of fact. The court held that while the inmates exhausted their administrative remedies under the Prison Litigation Reform Act (PLRA) for the officer that allegedly assaulted them, they had not exhausted administrative remedies against an officer who witnessed an assault and allegedly failed to intervene. (Southern Ohio Correctional Facility)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Dawes v. Walker, 239 F.3d 489 (2nd Cir. 2001). A prisoner brought a federal civil rights action against correctional officers, alleging retaliation in violation of his First Amendment rights in response to his successful appeal of a disciplinary order issued by one officer, and his filing of a complaint against that officer. The district court dismissed the claims and the appeals court affirmed. The appeals court held that the officer's references to the prisoner as an "informant" and "rat" in conversations with other inmates were not sufficiently adverse actions to constitute retaliation. (Auburn Correctional Facility, New York)

U.S. District Court
FRIVOLOUS SUITS

Dekoven v. Bell, 140 F.Supp.2d 748 (E.D.Mich. 2001). A prisoner sued individuals, a state, the United States and foreign counties, alleging they failed to recognize him as the "God-Messiah"

of the Holy Bible. The district court dismissed the case, finding it was "patently frivolous, implausible, and devoid of merit." According to the court, the prisoner had no constitutional right to be recognized and treated as the "Messiah-God" or any other holy, extra-worldly, or supernatural being or power. The court found the prisoner's request of payment from the federal government of certain precious and semi-precious metals to be the equivalent of a *Bivens* type of claim for money damages, which is barred by sovereign immunity absent a waiver. (Standish Maximum Correctional Facility, Michigan)

U.S. District Court
FRIVOLOUS SUITS
ATTORNEY FEES

Estate of Reynolds v. Greene County, 163 F.Supp.2d 890 (S.D.Ohio 2001). The estate of a prisoner who died of pneumonia several days after being transferred from a county jail to a state prison brought state court claims against the county and jail officials alleging that he was denied adequate medical care. The case was removed to federal court. The district court granted summary judgment in favor of the defendants and the defendants moved for the award of attorney fees. The district court declined to award attorney fees, finding that the action was neither frivolous nor without foundation. (Greene County Jail, Ohio)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
EXHAUSTION
ATTORNEY FEE

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
FRIVOLOUS SUITS
42 U.S.C.A. Sec. 1983

Goodell v. Anthony, 157 F.Supp.2d 796 (E.D.Mich. 2001). A state prison inmate brought an in forma pauperis § 1983 action against his cellmate, alleging that his cellmate caused his typing paper to be confiscated by prison officials. The district court dismissed the case as frivolous, noting that the cellmate was not acting under the color of state law. (Pine River Correctional Facility, St. Louis, Michigan)

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

Harvey v. Schoen, 245 F.3d 718 (8th Cir. 2001). State officials moved to terminate a 1973 prison conditions consent decree, pursuant to the Prison Litigation Reform Act (PLRA). The district court granted the motion and inmates appealed. The appeals court affirmed, finding that the mandatory termination provision of PLRA did not violate separation of powers principles. The district court had found that there were no current and ongoing federal rights violations, and the appeals court held that the district court did not abuse its discretion in denying the request for additional discovery in order to permit prisoners to supplement the record to show ongoing violations. (Minnesota Correctional Facilities at Stillwater and St. Cloud)

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

Hubbard v. Haley, 262 F.3d 1194 (11th Cir. 2001). A group of 18 state prison inmates who were dialysis patients brought a pro se § 1983 action against corrections officials and others, alleging inadequate medical care and diet in violation of the Eighth Amendment. The district court dismissed the action under the provisions of the Prison Litigation Reform Act (PLRA) that required the inmates to file separate complaints and pay separate filing fees. The inmates appealed and the appeals court affirmed, finding that PLRA did not permit joinder of claims so as to share the mandatory filing fee. (St. Clair Correctional Facility, Alabama)

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

Larkin v. Galloway, 266 F.3d 718 (7th Cir. 2001). An inmate who was severely beaten by correctional officers brought suit under § 1983 to recover monetary damages for injuries. The district court dismissed the case based on the inmate's failure to exhaust his administrative remedies and the appeals court affirmed. The appeals court held that the inmate was not excused from having to exhaust his administrative remedies simply because the administrative process could not result in the monetary award he wanted. (Federal Correctional Institution, Greenville, Illinois)

U.S. District Court
PLRA-Prison Litigation Reform Act
IN FORMA PAUPERIS

Lewis v. Sullivan, 134 F.Supp.2d 954 (W.D.Wis. 2001). A prisoner sued the State of Wisconsin challenging the constitutionality of the in forma pauperis provision of the Prison Litigation Reform Act (PLRA). The district court held that the prisoner asserted a fundamental constitutional right in alleging that a prison violated the Eighth Amendment by denying him any medical care for his alleged post traumatic syndrome condition. The court found that the provision of PLRA that prohibited in forma pauperis actions by prisoners with three prior complaint dismissals could not be constitutionally applied to the prisoner's claim. According to the court, in order to be constitutional, the provision was required to afford prisoners with three prior convictions who were asserting a fundamental constitutional right, the same opportunity to proceed in forma pauperis as was available to other in forma pauperis prisoners. (Waupun Correctional Institution, Wisconsin)

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

Marvin v. Goord, 255 F.3d 40 (2nd Cir. 2001). A prisoner brought a civil rights suit alleging prison officials were deliberately indifferent to his serious medical needs because they refused to permit, even at his own expense, a dentist to perform a root canal to treat an oral infection. The district court dismissed the claims and the prisoner appealed. The appeals court vacated and remanded in part, and affirmed in part. The appeals court held that the prisoner was not required to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) since the challenged conduct was conduct which was either clearly mandated by a prison policy or undertaken pursuant to a systemic practice. (Collins Correctional Facility, New York)

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

Shaheed-Muhammad v. Dipaolo, 138 F.Supp.2d 99 (D.Mass. 2001). A prisoner brought a pro se civil rights action against employees of the Massachusetts Department of Corrections for alleged violation of his right to practice his Muslim religion. The district court held that the prisoner's transfer to a correctional facility outside the jurisdiction of Massachusetts rendered his claims for injunctive relief moot, but that the Prison Litigation Reform Act (PLRA) did not bar the prisoner's claims under § 1983 for violation of his right to practice his Muslim religion. The prisoner alleged that corrections officials failed to provide him with vegetarian meals, denied him access to a newspaper published by the Nation of Islam , confiscated a medallion of religious significance, and transferred him to another facility in retaliation for asserting his religious freedoms. (Massachusetts Dept. of Corrections)

U.S. Supreme Court
JAILHOUSE LAWYERS
LEGAL ASSISTANCE

Shaw v. Murphy, 121 S.Ct. 1475 (2001). The U.S. Supreme Court reversed a federal appeals court ruling that held that inmates have a First Amendment right to give legal assistance to other prisoners. A Montana state prisoner sent a letter to a fellow inmate containing legal advice. The letter was intercepted and the inmate who sent it was sanctioned for violating prison rules that prohibited insolence and interfering with due process hearings. The appeals court ruled that a First Amendment right to provide legal advice to other prisoners should be taken into account when determining if a prison regulation that impinges on inmates' constitutional rights is valid. In a unanimous decision, the Supreme Court held that there is no such "special First Amendment right" to provide legal assistance to fellow prisoners that enhances any protections otherwise available. According to the Court, prisoners' constitutional rights are "more limited in scope" than the rights held by individuals in society at large and the Court has "generally deferred" to prison officials' judgment in upholding regulations which limit prisoners' First Amendment rights. (Montana)

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

Torres v. Alvarado, 143 F.Supp.2d 172 (D.Puerto Rico 2001). A prison inmate who had been attacked and sodomized by other inmates sued prison officials, alleging they failed to protect him from harm. The prisoner sought monetary damages. The district court dismissed the case because the inmate failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA). The court noted that the inmate must exhaust his administrative remedies, even though the administrative remedies could not provide the monetary relief sought. (Regional Metropolitan Detention Center, Puerto Rico)

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

Serrano v. Alvarado, 169 F.Supp.2d 14 (D.Puerto Rico 2001). A prison inmate brought a § 1983 action against prison officials, alleging he was beaten by security guards and denied medical attention. The district court required the inmate to exhaust administrative remedies first, as required by the Prison Litigation Reform Act (PLRA), even though the grievance procedure in place did not allow the remedy sought by the inmate. (Guayama Corr'l. Facility, Puerto Rico)

2002

U.S. District Court
LEGAL MATERIAL

Acoolla v. Angelone, 186 F.Supp.2d 670 (W.D.Va. 2002). A prisoner who was bringing four pro se lawsuits at one time submitted two letters to the court, complaining that the prison where he was housed refused to provide him with free legal materials every week, and that some of his mail from the court had been opened by prison officials before they delivered it to him. The district court denied the prisoner's request for a preliminary injunction that would provide him with additional free legal materials, and found that the alleged opening of the prisoner's mail from the court, outside his presence, did not violate any protected right. (Virginia)

U.S. Appeals Court
INITIAL APPEARANCE

Alkire v. Irving, 305 F.3d 456 (6th Cir. 2002). An arrestee brought a § 1983 action against a sheriff, county, and county judge, alleging violation of his Fourth, Thirteenth and Fourteenth Amendment rights. The district court denied the arrestee's motion for class certification and granted summary judgment for the defendants on the remaining issues. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the Sheriff's policy of detaining persons in the county jail until their initial appearance was the type of "policy or custom" under which the county could be held liable under § 1983. As the result of the policy, persons arrested without warrants from late Friday afternoon through Sunday morning would not likely appear in court before Tuesday morning, in violation of a requirement that a probable cause hearing be held within 48 hours of a warrantless arrest. The appeals court held that the county, sheriff and county clerk's office had quasi-judicial immunity and qualified immunity from § 1983 liability for failing to allow credit toward fines and costs for time served. (Holmes County Jail, Ohio)

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

Atchison v. Collins, 288 F.3d 177 (5th Cir.2002). An inmate filed a motion asking the federal court to compel a correction department to deduct no more than 20% of his monthly income to pay for filing fees incurred as the result of unsuccessful actions in federal court. The district court denied the motion and the appeals court affirmed. The department had been deducting 60 percent to pay for three filing fees on which the inmate owed money; the appeals court held that the twenty-percent-of-income payments provided for under the Prison Litigation Reform Act (PLRA) must be calculated "per case" rather than "per prisoner." (Texas Department of Criminal Justice, Eastham Unit)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Baskerville v. Blot, 224 F.Supp.2d 723 (S.D.N.Y. 2002). A state prisoner filed a § 1983 action alleging that corrections officers filed a frivolous misbehavior report against him in retaliation for his filing grievances and a lawsuit against the state. The prisoner also alleged that medical personnel failed to provide him with adequate care. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that fact issues as to whether an officer's assault on the prisoner was in retaliation precluded summary judgment. The court found that an officer's issuance of a false misbehavior report against the prisoner, a restraint order that resulted in his confinement in keeplock, denial of showers and telephone privileges, and use of restraints, established adverse acts necessary to support the prisoner's First Amendment claim of retaliation. The court held that a prison nurse's failure refill the prisoner's blood pressure medication for several days did not show deliberate indifference, absent a showing that the nurse acted intentionally to withhold medication or was in any way responsible for the delay in obtaining a refill of his medication from an outside pharmacy. (Elmira Correctional Facility, New York)

U.S. Appeals Court
JAILHOUSE LAWYERS
LEGAL ASSISTANCE
LAW LIBRARY

Bear v. Kautzky, 305 F.3d 802 (8th Cir. 2002). State prisoners brought a § 1983 action against prison officials, challenging a prison policy that prohibits prisoners from communicating with other prisoners who serve as jailhouse lawyers. The district court entered a preliminary injunction barring enforcement of the policy. The appeals court affirmed, finding that the prisoners demonstrated that they had suffered actual injury for the purpose of a right-of-access to court claim. The prisoners had testified that they had pending post-conviction proceedings and they did not have the knowledge or skill to pursue those claims without legal assistance, and that they were receiving or had sought such assistance from jailhouse lawyers. According to the court, a prison system may experiment with prison libraries, jailhouse lawyers, private lawyers on contract with the prison, or some combination of these and other devices, as long as there is no actual harm to the constitutional access rights of particular inmates to the courts. (Iowa State Penitentiary)

U.S. Appeals Court
RETALIATION

Bell v. Johnson, 308 F.3d 594 (6th Cir. 2002). A former state inmate sued prison officers, alleging that they retaliated against him in violation of the First Amendment because he filed a civil rights lawsuit. The district court granted judgment as a matter of law in favor of the officers and the inmate appealed. The appeals court reversed and remanded, finding that the inmate engaged in protected conduct when he filed his initial complaint against the officers, and that the officers were not entitled to qualified immunity. The inmate alleged that the officers twice left his cell in disarray, confiscated his legal papers without returning them, and stole medical diet snacks that had been provided to alleviate his weight loss from AIDS. The inmate testified that he was afraid to leave his cell and worried that the officers were tampering with his food. (State Prison for Southern Michigan)

U.S. District Court
FILING FEE
PLRA-Prison Litigation Reform Act

Bond v. Aguinaldo, 228 F.Supp.2d 918 (N.D.Ill. 2002). A state prisoner brought a § 1983 action alleging neglect of his medical condition. The district court ruled that the prisoner met the standard for proceeding without paying a filing fee because he invoked the imminent danger exception to the three strikes rule of the Prison Litigation Reform Act (PLRA). (Stateville Correctional Center, Illinois)

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

Brown v. Croak, 312 F.3d 109 (3rd Cir. 2002). A state prisoner who was assaulted by other inmates brought a pro se action against prison officials alleging failure to protect and retaliation. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded, finding that the inmate had not failed to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA). The court held that although the prisoner did not attempt to file an administrative grievance for initial review, he alleged that he had asked to file a complaint and was told by prison officials that he had to wait until their investigation was complete. Several months later the prisoner had still not been told that the investigation was complete. The prisoner had been assaulted by other inmates who wanted to use the small single toilet that he was using in a cafeteria. The other inmates wanted to use the bathroom to smoke and the prisoner contended that the prison's failure to enforce its no-smoking policy caused his injuries. (State Correctional Institution, Houtzdale, Pennsylvania)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Burke v. North Dakota Corrections and Rehabilit., 294 F.3d 1043 (8th Cir. 2002). An inmate brought a § 1983 action alleging that a corrections department and its medical services contractor denied him treatment for his hepatitis C. The district court dismissed the case. The

appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the inmate's allegation that the correctional facility's medical director prevented him from being seen by doctors because of the inmate's prior lawsuit against the director, alleged more than a disagreement over the proper course of treatment, and the case should not have been dismissed. (North Dakota Department of Corrections and Rehabilitation, Medcenter One)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION
JAILHOUSE LAWYERS

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 Corr'l. Institute, Mahoney, Penn.)

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

Concepcion v. Morton, 306 F.3d 1347 (3rd Cir. 2002). Prisoners brought an action alleging that corrections officials used excessive force in two separate incidents. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed, finding that the exhaustion requirement in the Prison Litigation Reform Act (PLRA) applied to the grievance procedure described in the inmate handbook, even though it had not been formally adopted by the state administrative agency and even though the effectiveness of the handbook's grievance procedure may have been unclear. (New Jersey State Prison)

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

Cox v. Malone, 199 F.Supp.2d 135 (S.D.N.Y. 2002). A state prisoner filed a § 1983 action against prison officials, alleging excessive use of force during a pat down frisk search, and due process violations in connection with a disciplinary hearing. The district court granted summary judgment in favor of the officials, finding that the physical injury requirement of the Prison Litigation Reform Act (PLRA) applied after the prisoner was paroled, and that the scratch on the prisoner's hand allegedly resulting from a pat frisk was not sufficiently serious to warrant Eighth Amendment protection. (Mid-Orange Correctional Facility, New York)

U.S. District Court
LEGAL MATERIALS
EXHAUSTION
PLRA-Prison Litigation Reform Act
FRIVOLOUS SUITS

Davis v. Milwaukee County, 225 F.Supp.2d 967 (E.D.Wis. 2002). A state prisoner filed a pro se § 1983 action claiming that his constitutional right of access to the courts was violated when he was a pretrial detainee at a county jail. The defendants moved for summary judgment and the district court granted the motion in part, and denied it in part. The district court held that the detainee's access to courts was impeded because the county sheriff and others interfered with the detainee's ability to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA). According to the court, the detainee was unable to learn about the newly-enacted PLRA due to the absence of any legal materials at the jail, and only learned of the Act's exhaustion requirements after he had been transferred from the jail, when it was too late. The court noted that even if the detainee had known about PLRA, the absence of materials at the jail about the grievance procedure itself would have prevented him from knowing how to fully exhaust. When the defendants' rejected the detainee's grievance they advised him that it was "not a grievable situation." The court held that the detainee's claim that he had to pay too much for postage on his letters because the jail had no meter mail service to weigh them, was frivolous. Because the detainee had access to a court-appointed lawyer at all times during his case, the court held that alleged lack of legal materials at the jail did not hinder his defense. The court held that the detainee's claim that the defendants rejected his mail without notifying him was non-frivolous, as required to establish a claim that he had been denied access to courts. The court found that the detainee's allegations that pretrial detainees such as himself were treated worse than convicted prisoners in a number of ways, including being given less time out of their cells, was a non-frivolous claim of violation of equal protection. (Milwaukee County Jail, Wisconsin)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
IN FORMA PAUPERIS

Dupree v. Palmer, 284 F.3d 1234 (11th Cir. 2002). A prisoner brought an in forma pauperis civil rights action and the district court determined that the prisoner was not entitled to that status under the provisions of the Prison Litigation Reform Act (PLRA). The district court dismissed the suit without first giving the prisoner the opportunity to pay the full filing fee. The prisoner appealed and the appeals court affirmed, finding that the district court had followed the proper procedure, as the filing fee must be paid at the time the suit is initiated. (Florida)

U.S. District Court
ACCESS TO COURT
PRIVILEGED COR-RESPONDENCE

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
LEGAL ASSISTANCE
LAW BOOKS
PHOTOCOPYING
INDIGENT INMATES

Ferguson v. New Mexico Corrections Dept., 38 Fed.Appx. 561 (10th Cir. 2002). A state prison inmate challenged a new policy that allegedly restricted inmates' access to courts. The district court dismissed the action and the appeals court affirmed. The appeals court held that the inmate's right of access to court was not violated and that the inmate did not have a Sixth Amendment right to self-representation. Prison authorities had cut off access to the complete United States Code, eliminated inmate legal assistants, and started to charge indigent inmates for copies of legal materials, notary services and legal telephones and mail. The prison provided only one hired legal aide for the entire prison instead of allowing inmate assistants. (New Mexico Department of Corrections)

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

Ferrington v. Louisiana Dept. of Corrections, 315 F.3d 529 (5th Cir. 2002). A state prisoner brought a § 1983 action against a corrections department and its employees, alleging negligent and intentional violation of his Eighth Amendment right to medical treatment. The district court dismissed the case without prejudice for failure to exhaust state remedies and the prisoner appealed. The appeals court affirmed, finding that even though the state supreme court had found the state's statutory prison grievance system to be unconstitutional in part, the system remained in force and the prisoner was required to exhaust his administrative remedies before filing suit under § 1983. The court also held that the prisoner's alleged blindness did not excuse him from the exhaustion requirement of the Prison Litigation Reform Act (PLRA). (Claiborne Parish Detention Center, Louisiana)

U.S. District Court
ACCESS TO ATTORNEY
SCREENING

Foster v. Fulton County, 223 F.Supp.2d 1301 (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 by ordering remedies. The county moved to stay the corrective actions that were ordered and the district court denied the motion. The court affirmed its requirement that the county develop a unified system for providing counsel within 72 hours of arrest to persons arrested on state law misdemeanor charges. The court also ordered the county to develop a meaningful discharge planning process for physically and mentally ill inmate. (Fulton County Jail, Georgia)

U.S. Appeals Court
LEGAL MATERIALS
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
LEGAL MATERIALS
JAILHOUSE LAWYERS
PRIVILEGED CORRESPONDENCE
SEARCHES

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
EXHAUSTION
PLRA-Prison Litigation Reform Act

Hemphill v. New York, 198 F.Supp.2d 546 (S.D.N.Y. 2002). An inmate brought a § 1983 action alleging that prison staff used excessive force against him. The district court dismissed the action, finding that the inmate had failed to satisfy the exhaustion requirement of the Prison Litigation Reform Act (PLRA). According to the court, a letter the inmate sent to a prison superintendent could not be deemed a "grievance" for PLRA purposes. The court noted that the state corrections department had a well documented grievance procedure that consisted of three levels: filing a complaint with the Inmate Grievance Review Committee, appeal to the facility superintendent, and appeal to a Central Office Review Committee. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
ATTORNEY FEE
INDIGENT INMATES

In re Alea, 286 F.3d 378 (6th Cir. 2002). A state inmate petitioned for a writ of prohibition to prevent the U.S. District Court from further collections of money from his prison account for payment of a filing fee in his dismissed civil rights action. The appeals court denied the petition, finding that the dismissal of the suit under the three-strikes provision of the Prison Litigation Reform Act (PLRA) did not obviate the requirement that he pay the district court filing fee. The court noted that under PLRA, pauper status for inmates no longer exists and all prisoners must pay the required filing fees and costs and are not entitled to a waiver. (U.S. District Court, Kentucky)

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

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 Act (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. District Court
FRIVOLOUS SUITS
PLRA-Prison Litigation Reform Act

Judd v. Furgeson, 239 F.Supp.2d 442 (D.N.J. 2002). A federal prisoner filed an amended motion to proceed in forma pauperis. The district court held that the inmate was barred by the Prison Litigation Reform Act's (PLRA) "three strikes" rule. The court noted that in this case, the rule was applied against a plaintiff who had filed over 200 civil actions in federal courts nationwide, many of which had been dismissed as frivolous. (Federal Correctional Institution at Fort Dix, New Jersey)

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

Lewis v. Sullivan, 279 F.3d 526 (7th Cir. 2002). A prisoner sued a state corrections agency challenging the constitutionality of a provision of the Prison Litigation Reform Act (PLRA) that required a prisoner who brought three or more frivolous actions to prepay filing fees in future actions. The district court determined that the provision was unconstitutional. The defendants appealed and the appeals court reversed, finding that the provision did not violate the prisoner's equal protection and due process rights for access to courts. The appeals court noted that the prisoner had the option to pay the filing fee, to refrain from filing frivolous litigation, to borrow the filing fee from friends or family, to borrow the filing fee from his attorney, to sue in state court rather than federal court, or to assert that he was in an imminent danger of serious physical injury. (Wisconsin Department of Corrections)

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

Ligon v. Doherty, 208 F.Supp.2d 384 (E.D.N.Y. 2002). A former county jail inmate brought a civil rights action against corrections officers who allegedly assaulted him. The district court denied the defendants' motion to dismiss, finding that the former inmate had not failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). The court held that the transfer of the prisoner from the county jail where the assault allegedly occurred, to a state prison, deprived the former inmate of the opportunity to file a grievance. (Suffolk County Jail, New York)

U.S. District Court
PRO SE LITIGATION

Lindell v. Litscher, 212 F.Supp.2d 936 (W.D.Wis. 2002). A state inmate brought several civil rights actions against corrections officials on his own behalf, and on behalf of fellow inmates. The district court dismissed the case, ruling that it would no longer hear multi-prisoner pro se civil rights actions and that it would require prisoners to file their own separate lawsuits. (Supermax Correctional Institution, Boscobel, Wisconsin)

U.S. District Court
EXPERT WITNESS

Marria v. Broaddus, 200 F.Supp.2d 280 (S.D.N.Y. 2002). A state prisoner brought a § 1983 action against prison officials alleging violation of the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Due Process Clause. The prisoner challenged the confiscation of certain religious materials. The district court denied summary judgment on the First Amendment and RLUIPA claims, but granted qualified immunity to the defendants on the due process claims. The court held that an expert report submitted by the prisoners was admissible, while the expert report submitted by prison officials was not admissible. The officials' report had been prepared by an expert with 40 years experience in criminal justice, but the court found it to be "misleading" and "based on unreliable methodology." The court discounted the expert's conclusions which were, according to the court, based on statistics from a questionnaire he sent to prison officials, in which he asked for help in defending the lawsuit. The court agreed with the plaintiffs' characterization of the expert's report as being "subjective and biased, and the results therefore do not bear the ndicia of trustworthiness required to admit a survey into evidence." The court concluded that

"because the Camp Report is misleading, unhelpful to the trier of fact, and founded on biased and therefore unreliable evidence, Camp's testimony is inadmissible." (Green Haven Correctional Facility, New York)

U.S. Appeals Court
IN FORMA PAUPERIS
PLRA-Prison Litigation Reform Act

McAlphin v. Toney, 281 F.3d 709 (8th Cir. 2002). A pro se inmate who was subject to the "three strikes" provisions of the Prison Litigation Reform Act (PLRA) filed an action alleging inadequate dental care. The district court dismissed the complaint and the inmate appealed. The appeals court reversed, finding that the inmate's complaint sufficiently alleged an imminent danger of serious physical injury that allowed the inmate to proceed in forma pauperis. The inmate alleged that he was denied dental extractions, even though his medical file indicated that they were needed immediately, until his gums became so infected that three additional teeth required extraction. (Varner Super Max, Arkansas Department of Correction)

U.S. District Court
LAW LIBRARY

Merriweather v. Sherwood, 235 F.Supp.2d 339 (S.D.N.Y. 2002). Prison officials moved, under the Prison Litigation Reform Act (PLRA), to dissolve a prison conditions consent decree entered 24 years earlier. Prisoners moved to postpone the automatic stay of the consent decree's provisions. The district court held that it lacked the discretion to postpone the automatic stay once the stay came into effect 30 days after the motion to dissolve was filed. The court noted that even assuming it had the discretion to postpone the automatic stay, the prisoners failed to show that they were entitled to a postponement, where the record did not demonstrate widespread or ongoing constitutional violations of rights to religious freedom, medical care, or access to counsel. The court found that prohibiting a prisoner in lockdown or "keeplock" from going to the law library was not constitutionally actionable, particularly where his requests for legal materials were honored during the keeplock period, giving him an adequate alternative means of performing legal research. (Orange County Correctional Facility, New York)

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

Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309 (11th Cir. 2002). A federal prisoner brought an action against cigarette manufacturers, alleging deceptive advertising, misrepresentation and strict liability under a state tort law. The district court dismissed the case as frivolous and the prisoner appealed. The appeals court affirmed in part and vacated in part. The appeals court held that allegations satisfied the amount-in-controversy requirement for diversity jurisdiction, and that the section of the Prison Litigation Reform Act (PRLA) that prohibited action for mental or emotional suffering while in custody did not apply to the prisoner's action against the manufacturers. (Wisconsin)

U.S. Appeals Court
EXPERT WITNESS
LEGAL ASSISTANCE

Montgomery v. Pinchak, 294 F.3d 492 (3rd Cir. 2002). A prison inmate brought a § 1983 action against prison officials, a physician and a corporate medical care provider, alleging that they were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court vacated and remanded, finding that the district court had abused its discretion in refusing to appoint counsel for the inmate. The court noted that numerous technical rulings against the inmate clearly indicated that the inmate was experiencing difficulty in proving the elements of his legal claim, and that his case was compromised because he lacked legal representation. According to the court, the inmate would have especially benefited from expert testimony because the inmate lacked the medical records that might otherwise have been used to demonstrate his alleged injury to a jury. The court held that the mere loss of the inmate's medical records by the officials, physician and medical provider did not rise to the requisite level of deliberate indifference. The inmate alleged that officials and providers refused to provide him with antiviral medications, x-rays, laboratory and blood work, and prescription medication refills-- all of which they had determined were necessary for his treatment before his medical records were lost. (Riverfront State Prison, New Jersey)

U.S. District Court
PRIVILEGED CORRES-PONDENCE

Moore v. Gardner, 199 F.Supp.2d 17 (W.D.N.Y. 2002). An inmate brought a pro se action against prison officials under § 1983 and § 1985, alleging mail tampering and unconstitutional conditions of confinement. The district granted summary judgment, in part, to the defendants, finding that the alleged mail tampering did not result in an actual injury to the inmate. The court denied summary judgment for the defendants on the issue of whether corrections officials improperly tampered with the inmate's legal mail when they opened the inmate's letter to an FBI agent and returned it to the inmate, and whether the officials opened the inmate's letter to his attorney and removed several hundred pages of documents. (Southport Correctional Facility, New York)

U.S. Appeals Court
RETALIATION
EVIDENCE

Moore v. Plaster, 313 F.3d 442 (8th Cir. 2002). A state prisoner brought a § 1983 action asserting disciplinary retaliation and other claims. The district court granted summary judgment in favor of the defendants on the retaliation claim, and the prisoner appealed. The appeals court affirmed, finding that there was evidence that the disciplinary actions against the prisoner were for actual violation of prison rules. (Jefferson City Corr'l. Center, Missouri)

U.S. District Court
RESTRAINTS

Pearl v. Cason, 219 F.Supp.2d 820 (E.D.Mich. 2002). An offender petitioned for habeas corpus relief and the district court denied the petition. The court held that shackling the prisoner did not deprive him of a fair trial. The offender's leg had been shackled during his trial, but the court found that the offender failed to show that the jury was able to see his leg chains. The court noted that the offender took the stand while the jury was out of the courtroom, and that the jury was aware that the offender was in jail pending trial. (Mound Corr'l Facility, Mich.)

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

Porter v, Nussle, 534 U.S. 516 (2002). In a unanimous decision, the U.S. Supreme Court ruled that the "exhaustion of remedies" requirement of Prison Litigation Reform Act (PLRA) applies to all lawsuits by inmates about prison life, including those involving particular incidents such as an allegation of excessive use of force by a correctional officer, as well as those that involve general circumstances or conditions. The Supreme Court decision resolved a prior conflict among the U.S. appeals courts as to whether or not the "exhaustion of remedies" requirement of PLRA applies to a prisoner's lawsuit over a single incident, such as an alleged assault by a correctional officer. At issue was the meaning of the phrase "prison conditions" in the PLRA statute. PLRA mandates that a prisoner must exhaust available administrative remedies, such as an internal prison grievance procedure, before pursuing a § 1983 lawsuit "with respect to prison conditions." A state prisoner in Connecticut brought a lawsuit in federal court against the state Department of Correction, asserting that corrections officers had subjected him to a sustained pattern of harassment and intimidation and had singled him out for a severe beating in violation of the Eighth Amendment prohibition on cruel and unusual punishment. The U.S. Court of Appeals for the Second Circuit overturned the district court's dismissal of the lawsuit based on the plaintiff inmate's failure to exhaust available administrative remedies before bringing suit. The U.S. Supreme Court reversed the appeals court, finding that PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or "some other wrong." (Connecticut)

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

Ray v. Kertes, 285 F.3d 287 (3rd Cir. 2002). A former state inmate brought a § 1983 action against prison officials alleging that he was assaulted by corrections officers and that they retaliated against him. The district court dismissed the complaint for failure to exhaust administrative remedies. The appeals court reversed, finding that while failure to exhaust administrative remedies is an affirmative defense that may be pleaded by the defendant, the district court could not dismiss the action for failure to exhaust administrative remedies and the inmate was not required to demonstrate compliance with the Prison Litigation Reform Act (PLRA) administrative exhaustion requirement. The inmate alleged he was assaulted twice by officers who then filed groundless misconduct charges against him when he threatened to sue. The inmate claimed that he filed various grievances with respect to the claims. (Pennsylvania State Correctional Institution at Huntingdon)

U.S. District Court
PRIVILEGED COMMUNICATION
TELEPHONE

Rodriguez v. Ames, 224 F.Supp.2d 555 (W.D.N.Y. 2002). A pro se state prisoner brought a suit against state corrections officials and employees, alleging violations of § 1983. The district court granted partial summary judgment for the defendants. The court held that a prison directive that prohibited prisoners from soliciting did not violate the prisoner's First Amendment rights because there was a rational connection between the directive and a legitimate governmental interest in prison security, and where there were no alternative avenues that would allow the prisoner to exercise his rights. The court found that the prisoner's Sixth Amendment right to privacy while speaking to an attorney was not violated by the presence of a corrections counselor for the duration of the call. The prisoner was attempting to secure legal representation for a potential § 1983 action and the court found that the prisoner failed to show any harm that resulted from the presence of the counselor. (Auburn Correctional Facility, N.Y.)

U.S. District Court
ACCESS TO ATTORNEY
PRIVILEGED CORRESPONDENCE
TELEPHONE

Simpson v. Gallant, 231 F.Supp.2d 341 (D.Me. 2002). A pretrial detainee brought an action against county officials, alleging violations of his right of access to telephone and mail services as the result of disciplinary actions taken against him. The district court held that the detainee's claim was properly characterized as a claim that jail disciplinary sanctions violated his constitutional right to make bail and to prepare his defense while he was a pretrial detainee. The court declined to determine, at the motion to dismiss phase of the case, if sanctions restricting access to mail and telephone were imposed to enforce reasonable disciplinary requirements. The court held that the detainee's allegations supported a claim that the officials interfered with his right to counsel, bail, and access to courts. The detainee alleged that the officials' restrictions forced his trial to be postponed, and that soon after his release from detention he was cleared of the charges. The detainee also alleged that he was able to make bail soon after he was able to contact his associate. (Penobscot Co. Jail, Maine)

U.S. District Court
EX-OFFENDER
PLRA-Prison Litigation Reform Act

Smith v. Franklin County, 227 F.Supp.2d 667 (E.D.Ky. 2002). A former county jail inmate brought a § 1983 action against a county, alleging Eighth Amendment and Americans with Disabilities Act (ADA) violations. The district court held that the former inmate was not required to exhaust administrative remedies under the provisions of the Prison Litigation

Reform Act (PLRA) because he was no longer confined. But the court dismissed the action, finding that the inmate did not assert an Eighth Amendment claim or ADA violation. The former inmate alleged that he was deprived of medical care while confined but the court found that his seizure was not seriously injurious, and although he was deprived of his medication for two and a half days, the court found no Eighth Amendment violation. (Franklin County Correctional Complex, Kentucky)

U.S. Appeals Court
LEGAL ASSISTANCE
LAW 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 allegation that the jail's inadequate resources prevented him from pursuing other court actions, was insufficient to raise a triable issue of fact where he alleged no actual injury and the jail's lack of resources only posed a theoretical problem. The inmate had requested legal assistance in connection with lawsuits he wished to pursue against the county, and writ of habeas corpus. He requested legal assistance, asked for case law, reference materials, legal forms and access to a law library. Jail officials informed him that they did not have the materials he was requesting, nor did they have a law library. The court noted that the inmate did have the assistance of a public defender, but that it was limited to his criminal case. (Allen County Jail, Indiana)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
IN FORMA PAUPERIS

Taylor v. Delatoore, 281 F.3d 844 (9th Cir. 2002). A prisoner brought an in forma pauperis § 1983 action alleging he was violently beaten by a prison officer and was then refused medical care. The inmate was ordered to pay an initial filing fee and failed to do so due to lack of funds. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's civil action should not have been dismissed for failure to pay the initial filing fee because the sole reason that the prisoner failed to pay the fee was lack of funds at the time that payment was ordered. The court noted that the "safety valve" provision of the Prison Litigation Reform At (PLRA) applied to the prisoner's initial fee and that the prisoner should be allowed to proceed with his action. (Los Angeles Co. Jail, Calif.)

U.S. District Court
ACCESS TO COURT

Terry Ex Rel. Terry v. Hill, 232 F.Supp.2d 934 (E.D.Ark. 2002). Pretrial detainees brought a class action against the Arkansas Department of Human Services, claiming that inordinate delays in providing evaluation and treatment of detainees who were referred by the court to determine their fitness to stand trial, violated their Constitutional rights. The district court entered judgment for the detainees. The court held that the inordinate delays amounted to prohibited punishment that violated the detainee's due process rights. The court also found that the officials displayed deliberate indifference to the detainees' circumstances, violating their Eighth Amendment rights. According to the court, the Arkansas Constitution speaks of the State's duty toward the mentally ill, and the Arkansas State Hospital, a division of the Department of Human Services, has responsibility for treating citizens committed by civil courts or by criminal courts for evaluation. (Ark. State Hosp., Ark.Dept. of Human Services)

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

Todd v. Graves, 217 F.Supp.2d 958 (S.D.Iowa 2002). An African-American state prisoner brought a § 1983 action against past and current prison wardens, alleging that their denial of his requests for furloughs to visit his hospitalized mother and then to attend her funeral constituted racial discrimination. The prisoner sought compensatory and punitive damages for stress and mental anguish. The district court dismissed the action, finding that the prisoner failed to allege a physical injury, as required under the provisions of the Prison Litigation Reform Act (PLRA). (Iowa State Prison)

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

Troville v. Venz, 303 F.3d 1256 (11th Cir. 2002). A civilly committed detainee filed a § 1983 action challenging his conditions of confinement. The district court dismissed the case for failure to state a claim and the detainee appealed. The appeals court reversed and remanded, finding that the civil detainee is not a "prisoner" for purposes of the Prison Litigation Reform Act (PLRA) and therefore the PLRA provision requiring full payment of the filing fee on appeal did not apply. The appeals court held that the district court should have permitted the detainee to amend his complaint. According to the court, the definition of "prisoner" in the in forma pauperis statute applies only to persons incarcerated as punishment for a criminal conviction, and a civil detainee is not a "prisoner." (South Bay Detainee Unit, South Bay Correctional Facility, Florida)

U.S. Appeals Court
RESTRAINTS
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, Northern District of Florida)

U.S. District Court
ACCESS TO COUNSEL

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
INTERROGATION
INITIAL APPEARANCE

U.S. v. Hernandez, 281 F.3d 746 (8th Cir. 2002). An inmate who had been convicted in federal court sought to appeal his conviction. The appeals court affirmed, finding that an overnight delay between the defendant's arrest on a drug charge and his appearance before a magistrate was neither excessive nor unnecessary, and that the defendant's statements while detained would not be suppressed. The court noted that the defendant was arrested in the evening and was questioned by police for two hours, and appeared before a magistrate the next morning, following a total delay of 15 hours. (Iowa)

U.S. District Court
TRANSFER

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 lead 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 County Jail, Iowa)

U.S. Appeals Court
VIDEO COMMUNICATION

U.S. v. Torres-Palma, 290 F.3d 1244 (10th Cir. 2002). An offender convicted in federal court appealed his conviction. The appeals court remanded the case for resentencing. The appeals court held that the use of video conferencing for sentencing violated a rule that required that the defendant be present at his sentencing. The judge who had tried the case outside his district as a volunteer, returned to his home district prior to sentencing and used video conferencing for the sentencing proceeding. The court noted that certain exceptions to the provisions of Fed.R.Crim.P. 43 are provided in 43(b), but that none of them explicitly permits the use of video conferencing. The court concluded that "although convinced of the need for and the benefits of technology to facilitate expeditious disposition of the ever-growing caseloads in federal courts," it had to find the use of video conferencing to be a violation of current regulations. The appeals court cited another appeals case (United States v. Lawrence, 248 F.3d 300), that found that Rule 43 "reflects a firm judgment, however, that virtual reality is rarely a substitute for actual presence and that, even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it." (United States District Court, District of New Mexico)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Walker v. Thompson, 288 F.3d 1005 (7th Cir. 2002). A state prisoner brought a § 1983 action against a former state governor and other officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the claim that the defendants conspired against him and other prisoners to keep them in prison beyond their mandatory release dates was properly asserted under the federal habeas corpus statute, but that the prisoner sufficiently stated a § 1983 claim with his allegations that the defendants retaliated against him for using the prison law

library by refusing to let him exercise outside of his cell. (Wisconsin)

U.S. District Court
RETALIATION FOR LEGAL ACTION

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. The restrictions on the prisoner's mail privileges applied only to free mail and did not affect mail that the prisoner paid for himself. After termination from his job in the legal clinic, he was allowed to use the clinic during the times allocated for his cellblock. (State Correctional Institution in Somerset, Pennsylvania)

U.S. District Court
JAILHOUSE LAWYERS
RETALIATION

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 sufficiently 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)

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

Wilson v. Sargent, 313 F.3d 1315 (11th Cir. 2002). A prisoner filed a §1983 suit and applied to proceed without prepayment of fees. The district court directed the prisoner to pay an initial partial fee and dismissed the case when the prisoner did not. The appeals court vacated and remanded. The appeals court held that the district court had properly assessed the initial filing fee and calculated the partial fee, but should have determined if the prisoner had attempted to comply with the fee order by requesting prison officials to withdraw funds, before dismissing the case. (Scott State Prison, Georgia)

2003

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

Baker v. Krieger, 287 F.Supp.2d 207 (W.D.N.Y. 2003). A state prison inmate brought a § 1983 action against a prison drill instructor, alleging use of excessive force in violation of the Eighth Amendment. The district court granted summary judgment in favor of the instructor. The district court held that the inmate's belief that his efforts to use the grievance process would be futile, based on his previous experience with filing an administrative grievance, did not excuse his failure to exhaust his administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA). (Lakeview Correctional Facility, New York)

U.S. District Court
TELECONFERENCE

Boddie v. New York State Division of Parole, 277 F.Supp.2d 280 (S.D.N.Y. 2003). A state prisoner filed a pro se petition for a write of habeas corpus, challenging his conviction. The district court denied the petition, finding that a parole board's actions in conducting a parole hearing via teleconferencing did not violate the prisoner's equal protection rights. The court eld that the parole board's actions in conducting the parole hearing via teleconferencing was neither irrational nor arbitrary and could not amount to an equal protection violation under the "class of one" disparate treatment theory. According to the court, the use of teleconferencing technology did not deprive the prisoner of a personal interview required by state parole procedures, and the prisoner was not prejudiced. (Arthur-Kill Correctional Facility, New York)

U.S. District Court
VIDEO COMMUNICATION

Boddie v. New York State Div. of Parole, 288 F.Supp.2d 431 (S.D.N.Y. 2003). A state prisoner petitioned for a writ of habeas corpus after he was denied parole. The district court denied the petition. The court held that a parole board's actions in conducting a parole hearing via teleconferencing did not violate the prisoner's equal protection rights. The court found that the parole board's actions were neither irrational nor arbitrary, where the teleconferencing technology was not used to deprive the prisoner of a personal interview, as required by state law. The court noted that the prisoner did not object to the electronic format of his parole hearing at the time of the hearing. (Arthur Kill Correctional Facility, New York)

U.S. District Court
LAW LIBRARY
VISITS
ACCESS TO ATTORNEY

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 found no denial of access to courts violation. The prisoners alleged that there were delays of two to three weeks in obtaining cites and materials from the prison law library, but they did not allege that these delays caused them any actual injuries or denied them a reasonably adequate opportunity to present their claims. 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. Appeals Court
JAIL HOUSE LAWYER
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
APPOINTED
ATTORNEY

Davidson v. Goord, 259 F.Supp.2d 238 (W.D.N.Y. 2003). A state inmate filed a § 1983 action alleging violation of his rights of access to court and counsel. The district court denied the inmate's motion for appointment of counsel and the inmate filed objections. The court held that the inmate was not entitled to appointment of counsel. The court noted that the pro se inmate was experienced with § 1983 litigation, was articulate and cognizant of basic procedural requirements, and that the suit did not present any difficult factual or legal issues. (New York State Department of Corrections)

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

Days v. Johnson, 322 F.3d 863 (5th Cir. 2003). A state prison inmate who had sustained a broken hand in a slip and fall in the prison's dining area brought a pro se § 1983 action seeking compensatory and punitive damages. The district court dismissed the action for failure to exhaust administrative remedies, and the inmate appealed. The appeals court vacated and remanded. The appeals court held that the inmate had sufficiently stated exhaustion of "available" administrative remedies as required by the Prison Litigation Reform Act (PLRA) by alleging that his broken hand had prevented him from timely filing the initial grievance. (Texas Department of Criminal Justice- Institutional Division, Smith Unit)

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

DeBlasio v. Gilmore, 313 F.3d 396 (4th Cir. 2003). A prisoner brought an in forma pauperis § 1983 action challenging a state's refusal to pay for his certified or registered "legal" mail. After the prisoner was released, the district court dismissed the action for failure to pay required filing fees. The former prisoner appealed; the appeals court vacated and remanded. The appeals court held that the former prisoner was not required to pay the remaining balance of his filing fee under the provisions of the Prison Litigation Reform Act (PLRA), since the prisoner had been released. The court noted that whether the prisoner had an obligation to pay filing fees was to be determined solely by whether he qualified for in forma pauperis status under the general statute. When he first filed the action, the prisoner signed a consent form agreeing to pay a filing fee of $150, but was told that he could pay it in installments if the court granted him in forma pauperis status. (Lunenburg Correctional Center, Virginia)

U.S. Appeals Court
LAW LIBRARY
AEDPA- Antiterrorism
and Effective Death
Penalty Act

Egerton v. Cockrell, 334 F.3d 433 (5th Cir. 2003). A prisoner convicted of aggravated robbery petitioned for federal habeas relief. The district court dismissed the petition as time-barred under the provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA). The prisoner appealed. The appeals court vacated and remanded. The court held that the prison's failure to provide a copy of AEDPA constituted an "impediment...created by state action," absent any evidence that the prisoner had actual knowledge of AEDPA and its limitations period. (Middleton Transfer Facility, Texas)

U.S. District Court
LAW LIBRARY
PHOTOCOPYING

Hale v. Scott, 252 F.Supp.2d 728 (C.D.Ill. 2003). A state inmate filed a § 1983 action alleging retaliation. The court found that a prison librarian's refusal to permit the inmate to make photocopies of legal documents, or to keep the prison law library open longer hours, was not in retaliation for the inmate's grievance and pursuit of litigation, where the policy about photocopies and library hours was applied to all inmates. (Lincoln Correctional Center, Illinois)

U.S. District Court
TRANSFER

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
INITIAL APPEARANCE

Hayes v. Faulkner County, Ark., 285 F.Supp.2d 1132 (E.D.Ark. 2003). An arrestee brought a § 1983 action against a county, sheriff and jail administrator, complaining of his long detention prior to an initial court appearance. The district court entered judgment in favor of the arrestee, finding that the county's detention policy was deliberately indifferent to the

arrestee's constitutional rights. The court held that the sheriff did not possess the requisite level of personal knowledge to be individually liable, but that the jail administrator was not entitled to qualified immunity. The sheriff and jail administrator were responsible for the policy under which the sheriff's office submitted the names of those confined in jail to the court, and then waited for the court to schedule a hearing. The policy resulted in a 38-day delay for the arrestee, in violation of his Fourth Amendment right to a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. The court held that it would enter an order awarding compensatory damages and attorney fees and costs, if the parties were unable to settle the amounts between them. The court found that the arrestee wasentitled to compensatory damages because his reputation in the community was compromised as the result of his confinement, he suffered mental anguish, emotional distress and physical pain while incarcerated, and he was financially injured when his home and property were left unattended for the 38 days he was confined. The arrestee had been brought to the jail when two outstanding warrants were discovered during a traffic stop. (Faulkner County Detention Center, Arkansas)

U.S. Appeals Court
LEGAL ASSISTANCE

Hicks v. Erie County, New York, 65 Fed.Appx. 746 (2nd Cir. 2003). [unpublished] Paralegals filed a § 1983 action challenging an unwritten policy prohibiting paralegals with felony convictions from obtaining privileged access to a county holding center. The district court entered summary judgment in favor of the county on all but one count, awarded nominal damages for a due process violation, and partially granted the paralegals' motion for attorney fees. The parties appealed. The appeals court affirmed in part, reversed in part, and remanded, finding that the county's policy did not violate the paralegals' due process rights. (Erie County Holding Center, New York)

U.S. District Court
FILING FEES
PLRA-Prison Litigation Reform Act

Ippolito v. Buss, 293 F.Supp.2d 881 (N.D.Ind. 2003). A prisoner whose in forma pauperis § 1983 suit was dismissed for failure to state a claim, moved to prevent further withdrawals on his prison account to satisfy any unpaid portion of the filing fee in his case. The prisoner asked to be allowed to pay the amount due no later than six months after his release from prison. The district court denied the motion, finding that the Prison Litigation Reform Act (PLRA) required the prisoner to pay the filing fee in monthly installments of 20 percent of the preceding month's income credited to his prison account. (Indiana)

U.S. District Court
RETALIATION FOR LEGAL ACTION

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
JAILHOUSE LAWYER
TRANSFER
SEARCHES

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
TRANSFER
LEGAL MATERIAL

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 Correctional Facility, Attica Correctional Facility, New York)

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

Kozohorsky v. Harmon, 332 F.3d 1141 (8th Cir. 2003). A state prison inmate brought a § 1983 action against corrections officials. The district court dismissed the action after finding that one claim against a warden had not been administratively exhausted, as required by the Prison Litigation Reform Act (PLRA). The inmate appealed, and the appeals court reversed and remanded. The appeals court held that the inmate should have been permitted to file an amended petition as he had requested, containing only exhausted claims, rather than having the entire action dismissed. (Tucker Maximum Security Unit, Arkansas Department of Correction)

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

Labounty v. Johnson, 253 F.Supp.2d 496 (W.D.N.Y. 2003). An inmate sued prison officials under § 1983, claiming he was placed in jeopardy when officials identified him to the general prison population as a member of a gang, and that officials retaliated against him after he successfully pursued a grievance. The court found that the inmate failed to exhaust administrative remedies for his prison gang claim, as required by the Prison Litigation Reform Act (PLRA). The inmate had bypassed the formal prison grievance procedures by communicating informally with higher-level prison officials. (Orleans and Collins Correctional Facilities, New York)

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

Lane v. Doan, 287 F.Supp.2d 210 (W.D.N.Y. 2003). A state prisoner brought a § 1983 action alleging various violations of his constitutional rights. The district court denied summary judgment for the defendants. The court held that the prisoner could proceed with his claim despite non-exhaustion of administrative remedies, where he was led by prison officials to believe that the alleged incident was not a grievance matter and he was assured that his claims were being investigated. (Elmira Correctional Facility, New York)

U.S. District Court
INDIGENT INMATES
POSTAGE
LEGAL MATERIALS

Lebron v. Armstrong, 289 F.Supp.2d 56 (D.Conn. 2003). A state inmate petitioned pro se for a writ of mandamus to require state corrections officials to provide him, and all other inmates, with legal materials on request. The district court decided that the petition would be construed as a motion for a preliminary injunction. The court held that the inmate had no authority to appear in federal court as an attorney for other inmates, and that the inmate failed to state a claim for violation of his constitutional right of access to the courts. The court found that the delay in the inmate's obtaining of paper, envelopes and copies of legal documents, was not a violation of his rights, and denied the petition for a preliminary injunction. The court noted that the inmate's right of access to the courts did not encompass a right to an immediate and unlimited supply of pre-paid envelopes and other supplies, without any requirement that he balance his need for these items against other commissary purchases when determining how to spend his available funds. The inmate had challenged an indigency policy that requires an inmate to have less than $5.00 in his inmate account for ninety days before being considered indigent, and thereby receive free mailing services. (Connecticut Department of Correction)

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

Lewis Ex Rel. Lewis v. Gagne, 281 F.Supp.2d 429 (N.D.N.Y. 2003). A juvenile adjudicated as delinquent and detained in a correctional facility, and his mother, brought an action against a state children and family agency, alleging excessive use of force and deliberate indifference to his serious medical needs. The district court denied summary judgment or judgment on the pleadings for the defendants. The court held that the Prison Litigation Reform Act (PLRA) applied to the juvenile, and that informal efforts made by the juvenile to notify the facility of his complaints were sufficient to satisfy the exhaustion requirement of PLRA. The juvenile, who was thirteen at the time, alleged that facility staff intentionally caused his hand and wrist to be seriously burned on a metal heater, and deliberately denied further medical treatment in an outside hospital or by a burn specialist. (Tyron Residential Facility, New York)

U.S. District Court
STATUTE OF LIMITATIONS
42 U.S.C.A. Sec. 1983

Lovett v. Seniff, 277 F.Supp.2d 896 (N.D.Ind. 2003). A jail inmate brought a § 1983 action alleging that jail officials failed to provide him with adequate medical treatment. The district court dismissed the case, finding that the action was barred by Indiana's statute of limitations that was applicable to injury actions. The court noted that the state had not affirmatively pleaded the statute of limitations defense because the inmate had pleaded facts that showed his action was time-barred. According to the court, the inmate "has pleaded himself out of court." The inmate had alleged that he was injured in the jail and that the jail nurse failed to treat him for 100 days. (Plainfield Correctional Facility, Indiana)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Mitchell v. Horn, 318 F.3d 523 (3rd Cir. 2003). A state prisoner brought a pro se § 1983 action against a corrections officer and other prison officials, alleging that the officer planted contraband near his locker in retaliation for complaints he filed against the officer, and that he was denied a fair hearing on the contraband charge. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that the prisoner lacked available remedies for meeting the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) because prison officials refused to provide him with the necessary grievance forms. The appeals court found that the prisoner stated a claim for retaliation under the First Amendment. (Graterford Correctional Institution, Pennsylvania)

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

Morgan v. Maricopa County, 259 F.Supp.2d 985 (D.Ariz. 2003). A former jail inmate brought a civil rights suit seeking damages as the result of an allegedly unreasonable body cavity search. The district court granted summary judgment to the defendants, finding that the inmate filed to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), by completing only one step of a multi-step jail grievance procedure. (Maricopa County Jail, Arizona)

U.S. Appeals Court
EVALUATION DUE PROCESS

Oregon Advocacy Center v. Mink, 322 F.3d 1101 (9th Cir. 2003). Nonprofit organizations sued state officials, contending that delays by a state mental hospital in accepting mentally incapacitated criminal defendants for evaluation and treatment, violated the defendants' substantive and procedural due process rights. The district court entered an injunction requiring the hospital to admit criminal defendants within seven days of a trial court's finding of their incapacity to proceed to trial. The state officials appealed and the appeals court affirmed. The appeals court held that the hospital's delay in admitting incapacitated defendants violated their substantive due process rights. According to the court, under state law it is the state mental hospital, not counties, that has the duty to accept mentally incapacitated defendants for evaluation and treatment. (Oregon State Hospital)

U.S. Appeals Court
LEGAL ASSISTANCE

Para-Profess. Law Clinic, SCI-Graterford v. Beard, 334 F.3d 301 (3rd Cir. 2003). Prison officials moved, under the provisions of the Prison Litigation Reform Act (PLRA), to terminate a nearly 14-year-old permanent injunction that required a prison law clinic to remain open. The district court granted the motion and prison inmates appealed. The appeals court affirmed, finding that PLRA did not encompass future violations, and an injunction was not needed to correct a current and ongoing violation. (State Correctional Institute at Graterford, Pennsylvania)

U.S. District Court
LEGAL MAIL

Pearson v. Simms, 345 F.Supp.2d 515 (D.Md. 2003). A state prisoner filed a civil rights action, alleging that prison defendants denied him access to the courts, and that he had been retaliated against for filing administrative procedures. The district court granted summary judgment in favor the defendants. The court held that the prisoner failed to establish a § 1983 claim for unconstitutional denial of access to the courts, even though the prisoner demonstrated that there was up to a week long delay in the posting of certain legal mail. The court noted that there was n evidence that the prison officials attempted to interfere with the posting of his mail, and the prisoner showed no actual injury or specific harm as the result of the delay. (Maryland House of Correction-Annex)

U.S. Appeals Court
IN FORMA PAUPERIS
FILING FEES
PLRA-Prison Litigation Reform Act

Redmond v. Gill, 352 F.3d 801 (3rd Cir. 2003). A state prisoner filed an in forma pauperis § 1983 action against corrections officials. The district court granted in forma pauperis status but dismissed the action without prejudice for failure to authorize payment of the filing fee from his prison account. The prisoner appealed. The appeals court vacated and remanded. The appeals court held that the district court was required to give the prisoner additional time to submit an authorization form that would allow withdrawals from his prison account. (Mercer County Prison, Pennsylvania)

U.S. District Court
FRIVOLOUS SUITS
COURT COSTS

Risdal v. Iowa, 243 F.Supp.2d 970 (S.D.Iowa 2003). A prisoner brought a pro se habeas corpus proceeding challenging the imposition of prison discipline. The defendants moved to dismiss the case based on a procedural default in state post-conviction proceedings. The district court denied the motion, finding that the state rule that requires litigants to have been unsuccessful in three or more suits to post a cost bond, infringed on a fundamental liberty right as applied to petitions filed by state prisoners. The court found that the state could not constitutionally block access to postconviction relief by applying a civil rule that permitted the court to impose a stay until any litigant, who had filed three or more unsuccessful actions in the past five years, posted a cost bond. (Iowa State Penitentiary)

U.S. District Court
LAW LIBRARY

Roberts v. Champion, 255 F.Supp.2d 1272 (N.D.Okla. 2003). An inmate brought a claim under § 1983 against prison officials, alleging multiple constitutional violations arising from the inmate's misconduct proceedings and his transfer from a correctional center to a maximum security facility. The district court granted the defendants' motion to dismiss. The court held that prison employees' alleged conduct of informing an inmate that he had to submit a visiting request to receive direct physical access to the prison law library, failed to support the inmate's claim of denial of meaningful access to courts. (Dick Conner Correctional Center, and Oklahoma State Penitentiary)

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

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
EXHAUSTION
PLRA-Prison Litigation Reform Act

Santos v. Hauck, 242 F.Supp.2d 257 (W.D.N.Y. 2003). A state inmate brought a § 1983 action against correctional officers, alleging various violations of his constitutional rights. The district court granted summary judgment in favor of the officers. The court held that the inmate failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). The court noted that although the inmate could choose not to appeal from an adverse administrative decision under state regulations, by doing so, the inmate forfeited his right to bring a § 1983 action in federal court. (Attica Correctional Facility, New York)

U.S. Appeals Court
CIVIL SUIT

Simmons v. Sacramento County Superior Court, 318 F.3d 1156 (9th Cir. 2003). A state prisoner brought a § 1983 action after a default judgment was issued against him in a civil personal injury action because he failed to appear due to his detention in jail on an unrelated criminal action. The district court dismissed the case and the appeals court affirmed. The appeals court held that a sheriff's refusal to transport the pretrial detainee from a jail to a courthouse for his civil personal injury trial did not violate the prisoner's due process right of access to courts. The court noted that the detainee did not claim that the sheriff's failure to transport him was intended to punish him, and the court found that punitive intent could not be inferred. The court held that the sheriff's refusal was rationally related to a legitimate penological interest in keeping detainees in jail unless absolutely necessary. (Sacramento County Jail, California)

U.S. Appeals Court
LAW LIBRARY

Tafoya v. McCall, 76 Fed.Appx. 266 (10th Cir. 2003) [unpublished]. A state inmate filed a § 1983 action alleging that prison officials failed to provide sufficient access to an adequate law library. The district court entered summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that the prisoner had sufficient access for the purpose of pursuing his pro se civil rights claims, where he had filed numerous pleadings during litigation, most of which cited a "plethora" of federal and state statutes, rules, regulations and cases. The prisoner had alleged that the library was inaccessible and inadequate, stating "the library...here is nothing! It takes ten days just to get there! and their [sic] is only pads and some P.3d." (Colorado)

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

Wallace v. Burbury, 305 F.Supp.2d 801 (N.D.Ohio 2003). A Jewish inmate brought an action against prison officials, alleging that the officials unconstitutionally refused to accommodate his religious beliefs. The district court entered summary judgment for the defendants. The court held that the inmate failed to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA). The court noted that the inmate erroneously used the prison general grievance procedures, rather than the specific procedure regarding requests for religious accommodations, and that the inmate did not re-file once he was aware of the correct procedure. (North Central Correctional Institute, Ohio)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

White v. Kautzky, 269 F.Supp.2d 1054 (N.D.Iowa 2003). A state inmate brought an action against a director of a state corrections department and the warden of a state penitentiary, alleging that his and other inmates' access to courts rights were violated by their failure to keep the penitentiary law library up to date. The court held that summary judgment for the inmate's individual claim was precluded by a genuine issue of material fact, as to whether the legal assistance system at the penitentiary, which used contract attorneys as a method to assist inmates, provided the inmate with a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts. (Anamosa State Penitentiary, Iowa)

2004

U.S. District Court
COURT COSTS

Abney v. Alameida, 334 F.Supp.2d 1221 (S.D.Cal. 2004). A state prisoner brought an action against a state corrections director alleging violations of the Fifth Amendment Takings Clause, the Equal Protection Clause, and due process. The prisoner alleged breach of judiciary duty and violations of state regulations regarding prison trust accounts, in connection with deductions taken from deposits made to the prisoner's trust accounts in order to pay court-ordered restitution. The court held that deductions taken from checks and money orders that were to be deposited into the prisoner's trust account in order to satisfy court-ordered restitution, did not violate the Takings Clause, where the restitution was duly authorized by state law. The court held that the director did not violate equal protection by allowing city and county inmates a $300 exemption of funds held in their trust accounts from collection to

satisfy restitution orders, but not affording the same exemption to state prisoners, because the difference in the length of incarceration terms and nature of convictions suggested that jail inmates would be able to satisfy restitution fines more quickly because they would be released into the workforce sooner than state prisoners. (California Department of Corrections)

U.S. District Court
PRIVILEGED CORRESPONDENCE

Allah v. Brown, 351 F.Supp.2d 278 (D.N.J. 2004). Inmates sued state prison officials, claiming that their policy of opening and inspecting their legal mail looking for contraband, especially anthrax, outside of their presence violated their First Amendment rights. The district court held that the policy violated the inmates' First Amendment rights but that the officials were entitled to qualified immunity from damages. According to the court, the risk of anthrax infection was minimal and was not reduced by the policy, except for the protection of the affected inmates, who were free to waive. The court granted qualified immunity to the officials due to uncertainties created by major terrorist attacks on September 11, 2001, finding that it would not be clear to a reasonable official that the policy violated the inmates' First Amendment rights. (East Jersey State Prison, New Jersey)

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

Blackmon v. Crawford, 305 F.Supp.2d 1174 (D.Nev. 2004). A state prison inmate brought a pro se § 1983 action against prison officials for violation of his Eighth Amendment rights, when they allegedly failed to provide adequate medical treatment. The district court held that the inmate did not exhaust his administrative remedies, as required under the Prison Litigation Reform Act (PLRA), for his claim that a doctor failed to properly treat his hepatitis C condition. The court found that the PLRA's exhaustion requirement did not apply to general state tort claim procedures, and that the total exhaustion requirement did not require dismissal of the entire action. The court allowed the inmate 20 days to amend his claim to remove the unexhausted claim. (Lovelock Correctional Center, Nevada)

U.S. District Court
LAW LIBRARY
PRIVILEGED CORRESPONDENCE
LEGAL MATERIAL

Booth v. King, 346 F.Supp.2d 751 (E.D.Pa. 2004). An inmate brought a pro se § 1983 action against employees and former employees of a city prison system. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the inmate failed to show that he suffered actual injury due to the alleged restrictions imposed on his access to the prison law library, opening of his legal mail outside of his presence, and destruction and confiscation of his legal papers. The court found that correctional officers did not violate the inmate's Eighth Amendment right against cruel and unusual punishment when they allegedly verbally abused him and threatened him with false reports, mail tampering, or violence. The court noted that verbal abuse and threats will not, without some reinforcing act accompanying them, sustain an Eighth Amendment claim. (Curran Fromhold Correctional Facility, Philadelphia, Pennsylvania)

U.S. District Court
EXHAUSTION
PLRA- Prisoner Litigation Reform Act

Borges v. Piatkowski, 337 F.Supp.2d 424 (W.D.N.Y. 2004). A state prison inmate brought a § 1983 action against a prison dentist, alleging deliberate indifference to his serious medical needs. The district court denied the dentist's motion for summary judgment, finding that special circumstances justified any failure by the inmate to exhaust his administrative remedies. The court noted that the inmate did not know until after his transfer to a different facility, that the dentist might have known of the true nature of the inmate's medical condition and intentionally refused to treat that condition. By the time the inmate learned that he had a foreign object in his tooth socket and that the dentist might have known about it and done nothing to address it, the 14-day period for filing a grievance had passed. (Southport Correctional Facility, New York)

U.S. Appeals Court
PLRA- Prisoner Litigation Reform Act
IN FORMA PAUPERIS
FILING FEES

Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004). State prisoners filed a § 1983 action and sought permission to proceed in forma pauperis under the Prison Litigation Reform Act (PLRA). The district court dismissed the action, finding that the prisoners could not litigate jointly in forma pauperis. The prisoners appealed. The appeals court reversed and remanded, finding that the district court was required to accept a joint complaint filed by multiple prisoners, if the criteria of permissive joinder were satisfied. The court held that each prisoner was required to pay one filing fee. (Wisconsin)

U.S. Appeals Court
LAW LIBRARY
ACCESS TO ATTORNEY
APPOINTED ATTORNEY

Bourdon v. Loughren, 386 F.3d 88 (2nd Cir. 2004). A pretrial detainee in a county jail who sought replacement of his court-appointed attorney, brought a § 1983 due process and equal protection action against county officials. The detainee alleged denial of access to courts because he was denied access to law library materials. The district court granted summary judgment for the defendants, and the detainee appealed. The appeals court affirmed, finding that the detainee was not denied access to the courts when he was allegedly denied materials from the jail law library, because the detainee had unrestricted access to an attorney. The court noted that there was no evidence of denial or restriction of the detainee's access to his attorney, and that he never requested the same law library reference materials from his attorney. (Chenango County Jail, New York)

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

Boyd v. Corrections Corp. of America, 380 F.3d 989 (6th Cir. 2004). A group of prisoners at a private correctional facility brought an action against the operator of the facility and individuals, alleging they were severely beaten and subjected to racial epithets by workers at the facility. The district court dismissed the action for failure to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA). The prisoners appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the PLRA exhaustion requirement applied to private correctional facilities. (Whiteville Correctional Facility, Tennessee)

U.S. District Court
APPOINTED ATTORNEY
PLRA- Prisoner Litigation Reform Act

Brewster v. Nassau County, 349 F.Supp.2d 540 (E.D.N.Y. 2004). A detainee brought a § 1983 action. The district court dismissed the complaint, finding that the detainee failed to state a § 1983 conspiracy claim against a legal aid society, which had sent three successive attorneys work with the detainee. The court considered these to be state law malpractice claims and declined to exercise jurisdiction. The court found that even if the detainee suffered all of the psychological and emotional injuries that he alleged, the Prison Litigation Reform Act (PLRA) precluded recovery against corrections officials under § 1983 because the detainee did not allege any physical injury. (Nassau County Correctional Facility, and Nassau County Legal Aid Society, New York)

U.S. District Court
INITIAL APPEARANCE
DUE PROCESS

Bunyon v. Burke County, 306 F.Supp.2d 1240 (S.D.Ga. 2004). A detainee brought a § 1983 action stemming from his arrest and the alleged refusal of jail authorities to release him on bail. The court denied summary judgment for the defendants on the issue of whether the sheriff's department failed to bring the detainee before a judicial officer within 72 hours after his arrest. The court held that the sheriff's department contravened state statutes and violated the detainee's procedural due process rights by refusing to release the detainee, despite his proffer of sufficient funds to post the amount of bail that had been set. (Burke County Jail, Georgia)

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

Carroll v. Yates, 362 F.3d 984 (7th Cir. 2004). A state prisoner brought a § 1983 Eighth Amendment action against corrections officials. The district court dismissed the action on the grounds of failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act. The inmate appealed. The appeals court reversed and remanded, finding that the prisoner did not fail to exhaust by failing to appear in person before a prison's review board, where the board did not have a rule requiring grievants to appear in person, and the inmate was allegedly not informed that the board wanted him to appear. (Illinois)

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

Chandler v. Crosby, 379 F.3d 1278 (11th Cir. 2004). Death row inmates brought a class action against state prison officials, alleging that high temperatures in their prison cells during the summer months amounted to cruel and unusual punishment. The district court denied relief following a bench trial and the inmates appealed. The appeals court affirmed, finding that the inmates failed to satisfy the objective component of their Eighth Amendment claim. The court held that the certified class of prisoner-plaintiffs satisfied the exhaustion requirement of the Prison Litigation Reform Act (PLRA) through "vicarious exhaustion" when one or more class members exhausted his administrative remedies with respect to each claim raised by the class. (Union Correctional Institution, Florida)

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

Deleon v. Doe, 361 F.3d 93 (2nd Cir. 2004). A state prisoner filed a § 1983 action alleging that mail room personnel at a correctional facility violated his constitutional rights. The district court dismissed the complaint, imposed a monetary sanction on the prisoner, and issued "one strike" against the prisoner. The prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the district court should not have issued a "strike" under the provisions of the Prison Litigation and Reform Act (PLRA) because the case was dismissed on its merits after a bench trial. The prisoner had alleged that mail room personnel had deliberately delayed mailing some of his submissions in an ongoing federal action. (Great Meadows Correctional Facility, New York)

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

Giano v. Goord, 380 F.3d 670 (2nd Cir. 2004). A state inmate, proceeding in forma pauperis, brought a § 1983 action against prison officials asserting claims for retaliation, faulty prison drug-testing procedures, and violations of his due process and Fourth Amendment privacy rights. The district court dismissed the complaint and the inmate appealed. The appeals court vacated and remanded, finding that the complaint alleged facts which, if true, would justify the inmate's failure to file an ordinary, separate, formal grievance to exhaust available administrative remedies, as required by the Prison Litigation Reform Act (PLRA). (Wende Correctional Facility, New York)

U.S. Appeals Court
INITIAL APPEARANCE

Hayes v. Faulkner County, Ark., 388 F.3d 669 (8th Cir. 2004). An arrestee brought a § 1983 action against a county, sheriff and jail administrator, stemming from his 38-day detention prior to an initial court appearance. The district court entered judgment in favor of the arrestee and the defendants appealed. The appeals court affirmed. The court held that the county's detention policy was deliberately indifferent to the substantive due process rights of

the arrestee and that the 38-day detention of the arrestee shocks the conscience. The county's detention policy involved the sheriff's office submitting names of those confined in jail to the court, and then waiting for the court to schedule a hearing. The court found that the policy improperly delegated the responsibility of bringing arrestees promptly to court for first appearance, and ignored the lack of authority for long-term confinement. The court held that the jail administrator was deliberately indifferent because he did nothing about the lengthy detention, even after he received four separate grievances from the arrestee. The administrator testified that he would have continued to wait for the court to schedule an appearance, even if the arrestee were held for 99 days. According to the court, a reasonable official would know that detentions of less than 38 days violated a state criminal procedural rule and the constitutional rights of the arrestee. The arrestee had been ticketed for not having automobile tags and insurance and had failed to appear in municipal court, resulting in the issuance of a bench warrant. When he was stopped for a traffic violation he was arrest on the warrant and did not post the $593 cash-only bond at the jail. (Faulkner County Jail, Arkansas)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Hernandez v. Goord, 312 F.Supp.2d 537 (S.D.N.Y. 2004). An inmate brought a pro se civil rights action against state prison employees and the employees moved to dismiss the complaint for failure to provide a short and plain statement of the claim, and for failure to state a claim. The district court granted the motions in part and denied in part. The court held that the inmate's allegations were sufficient to state a claim for conspiracy under § 1983 and that the inmate adequately alleged the personal involvement of a supervisory prison official in an alleged campaign of harassment and retaliation. The court denied qualified immunity for the defendants because their alleged acts violated clearly established law. The inmate alleged that prison employees retaliated against him after he filed a state court action. The inmate claimed that he was subjected to two cell fires, transferred to another prison, and that "bogus" misbehavior reports were filed against him. The inmate had filed previous grievances and litigation against a supervisor at another facility, and alleged that he was harassed and retaliated against by security staff once the supervisor arrived at the facility where he was currently confined. (Sing Sing Correctional Facility, and Green Haven Correctional Facility, New York)

U.S. District Court
LAW LIBRARY
EXPERT WITNESS

Hewes v. Magnusson, 350 F.Supp.2d 222 (D.Me. 2004). A state inmate brought an action asserting that prison officials violated his rights. The district court granted summary judgment in favor of the officials. The court found that the officials' failure to protect the inmate from an assault by another prisoner did not demonstrate deliberate indifference to the inmate's safety, even though the officials were aware of the inmate's past confrontations with the other prisoner and that they were currently housed in the same unit. The court noted that the inmate did not tell the officials that other inmates had told him that the prisoner was making statements about him. The court held that the prison's library schedule did not deprive the inmate of his right of access to courts, even if the inmate's laundry duties and hygiene needs limited his access to four and one-half hours per week, and the inmate had once been denied additional library time. Inmates were allowed to use the law library five days per week during their three-hour recreation period, the inmate was permitted to take books back to his cell, and the single denial of additional time had no material impact on the disposition of the inmate's case, according to the court. The inmate had designated as "expert witnesses" a number of fellow prisoners who would have testified about prison policies and procedures and would offer their opinions regarding the constitutionality of certain prison policies and procedures. (Maine State Prison)

U.S. District Court
LAW LIBRARY
LEGAL ASSISTANCE

Jackson v. Wiley, 352 F.Supp.2d 666 (E.D.Va. 2004). A state prison inmate brought a pro se § 1983 action alleging that prison officials denied him adequate medical care and access to prison law libraries. The district court held that the inmate failed to state a claim for violation of his Sixth Amendment right of access to the courts with allegations that he was denied adequate access to prison law libraries, and that a prison law librarian failed to provide him with legal assistance. The court noted that the inmate was granted extensive time in law libraries except for a period when the prison was in lockdown, and that the inmate was visited by a court-appointed attorney. (Sussex I State Prison, Virginia)

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

Jenkins v. Raub, 310 F.Supp.2d 502 (W.D.N.Y. 2004). A state prison inmate brought a pro se § 1983 action, alleging that he had been assaulted by correctional officers. The district court denied summary judgment for the officers, finding that the inmate had satisfied the Prison Litigation Reform Act's (PLRA) exhaustion requirement, even though he may not have technically exhausted the state's prescribed procedures. The court noted that the inmate had made both formal and informal attempts to register his grievance, and did not receive a formal response to his formal grievance until five months after it was filed, and had written additional letters to officials during that time. (Southport Correctional Facility, New York)

U.S. Appeals Court
LAW LIBRARY
PHOTOCOPYING

Johnson v. Unknown Dellatifa, 357 F.3d 539 (6th Cir. 2004). A pro se state prisoner brought separate § 1983 actions against various prison officials and staff. The district court dismissed the actions and the prisoner appealed. The appeals court consolidated the cases, and affirmed. The court held that the prisoner's § 1983 claims against a prison librarian, for allegedly failing to copy documents for his pending court case, was barred by the Eleventh Amendment. (Marquette Branch Prison, Michigan)

U.S. District Court
LAW LIBRARY
PLRA-Prison Litigation Reform Act

LaPlante v. Pepe, 307 F.Supp.2d 219 (D.Mass. 2004). A state prisoner filed a § 1983 action, alleging that prison officials had interfered with his right of access to courts by denying him physical access to the prison's law library. After the court entered summary judgment in favor of the inmate, the prisoner's counsel applied for attorney fees. The counsel requested $125,533 in fees and costs; the court awarded $99,981. The court found that the very high number of hours spent by the law firm representing the inmate was not unreasonable, even though the firm used junior attorneys to staff the case, where prison officials refused to concede a violation even when it was apparent in the face of a "crystal clear settlement agreement," refused to settle the case, and raised multiple insubstantial arguments. The court awarded hourly rates of $300 per hour for a litigation partner, $275 per hour for a senior litigation associate, $175 per hour for a mid-level litigation associate and $120 per hour for a junior litigation associate. The court did not apply the limitations of the Prison Litigation Reform Act (PLRA) because the settlement agreement provided that the fees would be awarded under § 1988. (MCI-Cedar Junction, Massachusetts)

U.S. Appeals Court
LEGAL MATERIALS
OTHER STATE

Lehn v. Holmes, 364 F.3d 862 (7th Cir. 2004). A pro se state prisoner sued a state, alleging denial of access to the courts and living conditions that violated the Eighth Amendment. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that the State of Illinois, the state in which the prisoner was confined, was the proper defendant on the prisoner's claim that denial of access to Maryland legal materials hampered his ability to respond to pending Maryland criminal charges. (Pontiac Correctional Center, Big Muddy Correctional Center, and Graham Correctional Center, Illinois)

U.S. Appeals Court
TELEPHONE
ACCESS TO COUNSEL

Lynch v. Leis, 382 F.3d 642 (6th Cir. 2004). A detainee joined a class action that challenged a county policy that allowed prisoners to make only collect telephone calls, which in combination with the public defender's policy of refusing collect calls operated to deny pretrial detainees their right to counsel. The district court found a Sixth Amendment violation of the pretrial detainees' rights and ordered an injunction. The county complied with the injunction. The district court awarded attorney fees to the detainee and the defendants appealed. The appeals court reversed, finding that the detainee lacked the standing to join the class action suit and thus was not entitled to attorney fees. (Hamilton County Justice Center, Ohio)

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

McEachin v. McGuinnis, 357 F.3d 197 (2nd Cir. 2004). A prisoner, proceeding in forma pauperis, brought a civil rights complaint against prison officials. The district court dismissed the action under the screening provisions of the Prison Litigation Reform Act (PLRA). The prisoner appealed, and the appeals court affirmed in part, reversed in part and remanded. The court held that the screening provisions of PLRA did not warrant sua sponte dismissal of free exercise claims involving the prisoner's placement on a restricted diet as a disciplinary measure, which deprived him of blessed food for his Ramadan observance. The inmate also alleged that the disciplinary action was the product of religious discrimination, because an officer issued an order that he knew the prisoner would not obey until after he finished his prayer. (Southport Correctional Facility, New York)

U.S. District Court
LAW LIBRARY
LEGAL MATERIAL

Phillips v. Hust, 338 F.Supp.2d 1148 (D.Or. 2004). A state prisoner brought a § 1983 action against a prison librarian, alleging violations of his right to free speech and right to access of courts. The court denied qualified immunity for the librarian, and found triable issues of fact regarding the motivations of the librarian in denying the prisoner timely access to a binder. The court noted that the librarian took an atypically long time to answer prisoner's request to bind, the prisoner's petition missed the filing deadline and was denied as untimely, and a person in the librarian's position should have known that refusal of the prisoner's request could result in him missing the filing deadline. The court held that a misconduct report filed against the prisoner by the librarian, following the prisoner's letter to a legal publisher, did not violate the prisoner's First Amendment rights. (Snake River Correctional Institution, Oregon)

U.S. District Court
LEGAL MATERIALS
RETALIATION
JAIL HOUSE LAWYER

Purkey v. CCA Detention Center, 339 F.Supp.2d 1145 (D.Kan. 2004). A federal prisoner brought a *Bivens* action against private prison employees. The district court denied the defendants' motion to dismiss. The district court held that employees at a private company under contract to house federal pretrial detainees were "federal actors" for the purposes of potential *Bivens* liability, since the detainees were in the custody of the United States Marshal and held under the authority of the United States pending disposition of federal charges against them. According to the court, the prisoner sufficiently stated that he was prejudiced by

the employee's destruction of his legal papers, for the purpose of his claim under *Bivens* that he was denied access to court. The court also found that the prisoner stated a claim for violation of his free speech and association rights. The court noted that prisoners incarcerated at prisons under contract to the federal government enjoyed the same constitutional protections as those inmates incarcerated at prisons that are actually run by the federal government. The court held that the prisoner was prejudiced by the employee's destruction of his legal papers because the papers contained written recollections of police interrogations shortly after they were conducted and also recounted representations that were made to him to elicit his cooperation in return for a lighter sentence. The court found that the prisoner stated a *Bivens* claim by alleging that employees disciplined him because he assisted other inmates in the preparation of grievances against the prisoner. According to the prisoner, the prison did not provide a law library and an attorney employed by the prison to answer legal research requests refused requests for assistance in preparing legal actions against the prison and its personnel. The prisoner alleged that employees harassed and threatened him, placed him in segregation, entered his cell and scattered his papers and belongings, denied him visits with his wife, and confiscated his legal materials because he filed grievances. (Corrections Corporation of America, Leavenworth, Kansas)

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

Rodriguez v. Westchester County Jail Correctional, 372 F.3d 485 (2nd Cir. 2004). A state prisoner brought a pro se § 1983 action alleging deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court reversed and remanded and the defendants moved for a rehearing. The appeals court denied the defendants' motion. The court held that some circumstances may justify a prisoner's failure to exhaust administrative remedies. The prisoner believed that exhaustion of administrative remedies was not required for prisoner complaints arising from a single episode, under the Prison Litigation Reform Act (PLRA). (Westchester County Jail, New York)

U.S. District Court
PHOTOCOPYING

Rumsey v. Michigan Dept. of Corrections, 327 F.Supp.2d 767 (E.D.Mich. 2004). An inmate filed a § 1983 action against librarians employed by a state corrections department, claiming he was unconstitutionally denied access to court. The district court granted summary judgment for the librarians, finding that the inmate failed to show actual injury. According to the court, a prisoner must show that the actions of prison officials hindered the prisoner's efforts to pursue a nonfrivolous claim. The inmate alleged that the librarians failed to complete his request for photocopies of his documents in a timely manner. (Robert Cotton Correctional Facility, and Charles Egeler Correctional Facility, Michigan)

U.S. Appeals Court
CIVIL SUIT
ACCESS TO COURT
LEGAL ASSISTANCE

Snyder v. Nolen, 380 F.3d 279 (7th Cir. 2004). A state prison inmate who had attempted to file a pro se marriage dissolution action and temporary restraining order in state court, brought a § 1983 action against a state-court clerk in his individual capacity, alleging that the clerk had violated the inmate's right of access to court by refusing to file his pleadings. The district court granted the clerk's motion to dismiss, and the inmate appealed. The appeals court affirmed, finding that although a potential violation of the inmate's right of access to the courts occurred, the inmate failed to state a claim. The appeals court noted that a state prison inmate's constitutional right of access to the courts is not limited to actions challenging the inmate's conviction, sentence or conditions of confinement. The court said that the right also protects the inmate's ability to file other civil actions having a reasonable basis in law or fact, but the state is not required to provide affirmative assistance in the preparation of legal papers for these types of actions. The state-court clerk, on his own initiative, refused to file the inmate's pro se marital dissolution pleadings, under the mistaken belief that counsel was required to prosecute the action. (Illinois Department of Corrections)

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

Soto v. Belcher, 339 F.Supp.2d 592 (S.D.N.Y. 2004). A former state prison inmate brought a § 1983 action against a corrections officer and prison officials, alleging retaliation and conspiracy in connection with his removal from his work assignment as a porter. The defendants moved for summary judgment on the grounds of failure to administratively exhaust claims, and the district court granted the motion. The district court held that the failure to exhaust administrative appeals in a grievance against a corrections officer was not excused by the inmate's transfer, nor was his failure to file an initial agreement against prison officials. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
PRO SE LITIGATION
42 U.S.C.A. Sec. 1983

Thomson v. Washington, 362 F.3d 969 (7th Cir. 2004). A state prisoner brought a pro se civil rights action against prison officials. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that heightened pleading requirements did not apply to the courts in a violation of the due process clause, infliction of cruel and unusual punishment by denying essential medical treatment, and retaliation for seeking to use the legal process to petition for the redress of grievances. (Illinois)

U.S. Appeals Court
LAW LIBRARY
LEGAL ASSISTANCE

U.S. v. Cooper, 375 F.3d 1041 (10th Cir. 2004). A defendant who was convicted of bank robbery appealed his conviction and alleged that he was deprived of due process by refusal of his request of access to a law library. The appeals court affirmed the conviction. The appeals court held that a prisoner who voluntarily, knowingly and intelligently waives his right to counsel in a criminal proceeding is not entitled to a law library or other legal materials. (Utah)

U.S. District Court
STATUTE OF LIMITATIONS
PLRA- Prison Litigation Reform Act

Wisenbaker v. Farwell, 341 F.Supp.2d 1160 (D.Nev. 2004). A state prison inmate brought a § 1983 action alleging that acts and omissions of corrections staff allowed a fellow inmate to violently attack and injure him. The district court denied the defendants motion to dismiss. The court held that the limitations period for a § 1983 was equitably tolled during the pendency of the inmate's administrative grievance against officials, and that equitable tolling was also appropriate for the duration of the inmate's previous pro se § 1983 action arising from the same incident. The court found that the Prison Litigation Reform Act (PLRA) did not require exhaustion of general state tort-claim procedures. (Nevada Department of Corrections)

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

Witzke v. Femal, 376 F.3d 744 (7th Cir. 2004). A prisoner filed a pro se civil rights complaint alleging deliberate indifference to his medical needs. The district court dismissed the complaint for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner was entitled to the opportunity to demonstrate that administrative remedies were not available. The court also held that the halfway house in which the probationer was confined while undergoing an intensive rehabilitation program as an alternative to probation revocation, came within the definition of "any jail, prison, or other correctional facility" such that the alleged deprivations of the probationer's rights involved "prison conditions" within the PLRA exhaustion requirement. (Outagamie County Jail, and Moorings Program Halfway House, Wisconsin)

2005

U.S. Appeals Court
RETALIATION

Bell v. Johnson, 404 F.3d 997 (6th Cir. 2005). A former state prisoner sued corrections officers, alleging that they had retaliated against him for filing a civil rights suit. The case was remanded by the appeals court. A jury verdict awarded the former prisoner $1,500 in compensatory damages but no punitive damages. The district court granted a new trial on damages and subsequently entered judgment on verdict against an officer for $6,000 in compensatory damages and $28,000 in punitive damages. The officer appealed. The appeals court affirmed. The appeals court held that the district court did not abuse its discretion by granting a new trial on damages. The officer had searched the prisoner's cell while the prisoner was in the prison yard for his daily hour of "yard time." When the prisoner returned to his cell he found it in disarray and he noticed that some of his legal papers and medical snacks had been taken. (State Prison of Southern Michigan)

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

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
PLRA-Prison Litigation Reform Act
EXHAUSTION

Boomer v. Deperio, 405 F.Supp.2d 259 (W.D.N.Y. 2005). A state prison inmate brought a § 1983 Eighth Amendment action against physicians employed by a state corrections department, alleging deliberate indifference to the prisoner's diabetes. The district court granted summary judgment in favor of the defendants. The court held that the physicians were not deliberately indifferent, given evidence of prescribing insulin, adjustment of insulin levels, and supplying of self-monitoring instruments. The court noted that the inmate's failure to name all of the physicians involved in the alleged mistreatment in his administrative grievance did not automatically preclude naming previously unnamed physicians in his § 1983 suit. (Attica Correctional Facility, New York)

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

Braham v. Clancy, 425 F.3d 177 (2nd Cir. 2005). A state prisoner brought a pro se § 1983 action against correctional officials alleging that they failed to protect him from an assault by another inmate. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court vacated and remanded. The court held that remand to the district court was required to determine whether the prisoner's filing of three request forms for a change of cell, and his complaint about the prison officials' unresponsiveness to

these forms, satisfied the exhaustion requirement of the Prison Litigation Reform Act (PLRA). (Corrigan Correctional Facility, Connecticut)

U.S. Appeals Court
EXHAUSTION
ADA- Americans with Disabilities Act
PLRA- Prison Litigation Reform Act

Butler v. Adams, 397 F.3d 1181 (9th Cir. 2005). A vision-impaired inmate brought an action under the Americans with Disabilities Act (ADA). The district court dismissed the action for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The inmate appealed. The appeals court reversed and remanded. The court held that the inmate had exhausted his PLRA-required administrative remedies when he filed a "Reasonable Modification Or Accommodation Request" form with state prison authorities, noting that he was blind and needed help in performing all of his everyday functions. (California Substance Abuse Treatment Facility and State Prison in Corcoran)

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

Cannon v. Washington, 418 F.3d 714 (7th Cir. 2005). A state prisoner brought a federal civil rights and state law action challenging two incidents involving strip searches and alleged beatings. Default judgment was entered for one defendant and the remaining defendants were granted summary judgment. The prisoner appealed. The appeals court vacated and remanded in part, and affirmed in part. The court held that the prisoner failed to exhaust administrative procedures for the purposes of the Prison Litigation Reform Act (PLRA) when he ignored the proper format for seeking reconsideration of denial of a late claim. The court found that confiscation of the prisoner's legal papers did not excuse noncompliance with a grievance deadline. The court concluded that a grievance that was deposited in the prison mail system on the last day of the State's filing deadline, but which was returned for insufficient postage, was not timely filed under the prison mailbox rule because it was not re-mailed with sufficient postage until after the expiration of the filing period. (Centralia Correctional Center, Shawnee Correctional Center, Illinois)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation Reform Act
LEGAL MATERIAL

Caudell v. Rose, 378 F.Supp.2d 725 (W.D.Va. 2005). A pro se state prisoner brought a § 1983 action against corrections officials, asserting claims of excessive force and violation of right of access to courts. The district court granted summary judgment in favor of the officials. The court held that the excessive force lawsuit was barred under the Prison Litigation Reform Act (PLRA) exhaustion provision, because the prisoner never appealed the denial of his prison grievance through all of the appropriate available channels. The court held that the prisoner failed to demonstrate that he suffered any prejudice in his habeas corpus proceeding that challenged his murder conviction or any other court proceeding as the result of a prison counselor's alleged failure to return to the prisoner the original copy of an arrest warrant on an unrelated charge. The court held that the right of access claim was barred for failure to show prejudice. (Virginia)

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

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 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
WRITING MATERIAL
LAW BOOKS

Davidson v. Murray, 371 F.Supp.2d 361 (W.D.N.Y. 2005). A state prisoner brought a § 1983 action against a state corrections department, officers and prison officials, alleging unconstitutional conditions of confinement during his incarceration. The district court granted summary judgment in favor of the defendants. The court held that the officers' alleged refusal to respond to the prisoner's request for legal writing supplies and specific law books did not violate his right of access to the courts, noting that the inmate filed at least 49 separate lawsuits in state and federal court during the three-year period in which he alleged his right of access to courts was restricted. (Attica Correctional Facility, New York)

U.S. District Court
PRIVILEGED CORRESPONDENCE

Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). A state prisoner and his attorney-friend brought a civil rights action against prison officials alleging violation of their First and Fourteenth Amendment rights. The plaintiffs moved for a preliminary injunction, which the district court granted. The court held that the plaintiffs demonstrated irreparable injury to their rights from the officials' blanket prohibition of all legal mail perceived by the officials to not directly pertain to the prisoner's cases. The court found the ban to be more restrictive than was necessary. The officials suspected that the prisoner was providing paralegal services for cases not related to his own. (Nevada)

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

Gabby v. Meyer, 390 F.Supp.2d 801 (E.D.Wis. 2005). A state prisoner brought a § 1983 action alleging that medical personnel violated his Eighth Amendment rights by providing him with inadequate medical care. The district court denied the defendants' motion for summary judgment based on the prisoner's failure to exhaust available administrative remedies. The court held that the prisoner had no available administrative remedies to exhaust, within the meaning of the Prison Litigation Reform Act (PLRA). Soon after the prisoner filed an inmate grievance complaining that prison medical personnel had failed to remove stitches in his throat and neck, a doctor and nurse provided the prisoner with the relief he requested by removing the stitches and ultimately arranging for the prisoner's transportation to a hospital. This relief was provided after the prisoner's artery burst. The court noted that complaining about medical personnel's failure to transfer him to a hospital would not have supplied relief to the prisoner, where he had already incurred the harm that he alleged resulted from the delay. The inmate alleged that doctors and a prison nurse failed to arrange for him to be treated by specialists, and that he was eventually found to be suffering from throat cancer. (Dodge County Correctional Institution, Wisconsin)

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

Goldsmith v. White, 357 F.Supp.2d 1336 (N.D.Fla. 2005). An inmate brought a federal civil rights action, alleging that a correctional officer took his contact lenses because of the inmate's homosexuality. The district court dismissed the case. The court held that the inmate failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). Although the inmate had filed a series of administrative grievances and appeals challenging the taking of his contact lenses, those filings made no assertion that he was homosexual or that his sexual orientation had anything to do with the taking of the lenses. (Florida Department of Corrections)

U.S. Appeals Court
EXHAUSTION
APPOINTED ATTORNEY

Greeno v. Daley, 414 F.3d 645 (7th Cir. 2005). A state prisoner filed a § 1983 action against corrections officials. The district court dismissed the complaint for failure to state a claim and the prisoner appealed. The appeals court reversed in part, affirmed in part and remanded. On remand the district court granted summary judgment to a number of defendants and again dismissed the prisoner's claims against the remaining defendants. The district court also denied the prisoner's motion requesting the assistance of counsel. The prisoner appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The appeals court held that the exhaustion of administrative remedies requirement was satisfied, even though the prisoner had not appealed every single complaint that he filed. The court held that the appointment of counsel for the indigent prisoner on appeal was warranted, since oral argument would have materially advanced the issues presented. (Racine Correctional Institution, Fox Lake Correctional Institution, Wisconsin)

U.S. District Court
LEGAL MATERIAL

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. Appeals Court
PLRA- Prison Litigation Reform Act

Jarriett v. Wilson, 414 F.3d 634 (6th Cir. 2005). A prisoner brought a civil rights action against prison officials under the Eighth Amendment, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the prisoner only had an unrecoverable "de minimis injury" for the purposes of his civil rights claim, which was subject to the provisions of the Prison Litigation Reform Act (PLRA). The court found that the officials' refusal to give the prisoner medical treatment was not objectively unreasonable. (Trumbull Correctional Institution, Ohio)

U.S. District Court
PRIVILEGED CORRES-PONDENCE

Johnson v. Hornung, 358 F.Supp.2d 910 (S.D.Cal. 2005). A state inmate filed a § 1983 action alleging that he was deprived of his right of access to courts when a prison official threw his legal mail in the trash rather than mailing it. The district court granted summary judgment in favor of the official. The court held that the inmate did not raise a genuine issue of material fact as to whether the official mishandled mail and the inmate did not suffer an actual injury. The court noted that numerous other officials were responsible for processing the mail after it was handed to the official. (Donovan Correctional Facility, California)

U.S. Appeals Court
PRIVILEGED CORRES-PONDENCE

Kaufman v. McCaughtry, 419 F.3d 678 (7th Cir. 2005). A state prison inmate brought a § 1983 First Amendment action against corrections officials, challenging their refusal to permit him to organize an atheism study group among inmates, and challenging his right to receive certain publications by mail. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and vacated and remanded in part. The court held that

mail addressed to the inmate from the federal Department of Justice, a non-profit civil liberties organization, and other legally-oriented entities was not shown to be "legal mail" that was entitled to heightened protections under the First Amendment, and therefore opening the items outside of the inmate's presence did not violate the inmate's rights to receive mail and to have access to courts. (Waupun Correctional Institution, Wisconsin)

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

King v. Federal Bureau of Prisons, 415 F.3d 634 (7th Cir. 2005). A federal prisoner brought a *Bivens* action against the Bureau of Prisons (BOP) and a warden claiming they had violated his rights by forbidding him from contacting his stockbroker and from buying a book on computer programming. The district court dismissed the case as frivolous and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prison did not violate the prisoner's First Amendment right of freedom of speech by preventing him from contacting his stockbroker because the order to sell was not the kind of verbal act that the First Amendment protected. But the court found that the prisoner stated a due process claim by alleging that officials arbitrarily prevented him from promptly contacting his stockbroker to sell stocks and that the claim was not frivolous for the purpose of the screening provision of the Prison Litigation Reform Act (PLRA). According to the court, the prison could have deprived the prisoner of property by depriving him of the power to respond to changing market conditions, and forbidding the prisoner to sell his property eliminated liquidity which was "one of the most important sticks in [the] bundle of rights that constituted ownership." (Federal Bureau of Prisons, Illinois)

U.S. District Court
LEGAL ASSISTANCE
JAILHOUSE LAWYER
RETALIATION

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. Appeals Court
PLRA-Prison Litigation Reform Act
EXHAUSTION

Lira v. Herrera, 427 F.3d 1164 (9th Cir. 2005). A state prison inmate brought § 1983 action alleging that his administrative segregation and placement in a special housing unit violated his due process rights. The district court granted summary judgment for the defendants based on the inmate's failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The inmate appealed. The appeals court reversed and remanded. The court held that PLRA does not require dismissal of an entire action when a prisoner brings a § 1983 mixed action (one containing both exhausted and unexhausted claims.) (Deuel Vocational Institute and Pelican Bay Prison, California)

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

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
PLRA-Prison Litigation Reform Act
EXHAUSTION

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
RESTRAINTS

Marquard v. Secretary for Dept. of Corrections, 429 F.3d 1278 (11th Cir. 2005). After his convictions for first-degree murder and armed robbery were affirmed and he was sentenced to death, a prisoner sought habeas corpus relief. The district court denied relief and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's due process claim based on his shackling during the penalty phase of the capital murder trial was procedurally barred, and that the prisoner's attorney did not provide ineffective counsel by failing to object to the shackling. (U.S. District Court for the Middle District of Florida)

U.S. District Court
VIDEO COMMUNICATION

Martin v. Lord, 378 F.Supp.2d 184 (W.D.N.Y. 2005). A state prisoner who was convicted of sodomy, sexual abuse and promoting prostitution petitioned for a writ of habeas corpus, The district court denied the petition. The court held that a six-year-old sexual abuse victim, who was the defendant's daughter, was a vulnerable witness and the trial court was justified in allowing the victim's testimony to be presented to the jury via closed-circuit television. The court found that the presentation of the testimony did not violate the defendant's Confrontation Clause rights under the Sixth Amendment. (Monroe County Court, New York)

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

McCray v. First State Medical System, 379 F.Supp.2d 635 (D.Del. 2005). A prisoner brought a § 1983 action against the state prison system's health care provider, alleging deliberate indifference to his medical needs. The district court granted the provider's motion to dismiss. The court held that the claim was subject to the exhaustion requirement of the Prison Litigation Reform Act (PLRA) and that the prisoner failed to exhaust remedies. The prisoner attributed his failure to file a grievance to his blood sugar level being out of control at the time of the incident. The court also held that the prisoner failed to state a cause of action with his claim that his rights were violated by a 2-hour commute to another prison facility. Officials had transferred the prisoner to another prison for a medical procedure, rather than using a local hospital. (Gander Hill Correctional Institution, and Delaware Correctional Center, Delaware)

U.S. District Court
PRIVILEGED CORRESPONDENCE

Moore v. Schuetzle, 354 F.Supp.2d 1065 (D.N.D. 2005). A state prison inmate brought a § 1983 action against corrections officials and against a physician, alleging that his legal mail was repeatedly opened out of his presence. The district court granted summary judgment in favor of the defendants. The court held that correspondence from a city police department and from a state corrections department was not constitutionally-protected "legal mail." According to the court, assuming that a letter from a legal advocacy group was protected legal mail, the mistaken opening of the letter did not amount to a First Amendment violation, since the opening was the letter was an isolated incident and there was no evidence of interference with the inmate's right of access to courts. (North Dakota State Penitentiary)

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

Neese v. Arpaio, 397 F.Supp.2d 1178 (D.Ariz. 2005). An inmate filed a § 1983 action alleging that county jail officials violated his Eighth Amendment rights by serving him inadequate meals and spoiled food, and by subjecting him to overcrowding and unsanitary living conditions. The district court dismissed the complaint, finding that the action was barred by his failure to exhaust his administrative remedies. According to the court, the county jail inmate had administrative remedies available to him regarding his complaints, which he did not fully exhaust, despite the inmate's claim that a jail official refused to give him grievance forms. The court noted that the inmate had filed many grievances and his cellmates had filed grievances, and the inmate had not grieved any issue to the highest administrative level available to him. (Maricopa County Durango Jail, Arizona)

U.S. District Court
LEGAL MATERIAL

Nelson v. Giurbino, 395 F.Supp.2d 946 (S.D.Cal. 2005). A state prisoner brought a pro se civil rights suit alleging that prison officials violated his First Amendment rights by denying him access to internet-generated materials and by denying his appeals regarding the alleged constitutional violations. The district court dismissed the action. The court held that the prisoner's claims for declaratory and injunctive relief were mooted by the issuance of a federal court's state-wide injunction against enforcement of the policy. The court granted qualified immunity from liability to the officials because the constitutional right to Internet-generated material was not clearly established at the time. (Pelican Bay State Prison, California)

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

Ngo v. Woodford, 403 F.3d 620 (9th Cir. 2005). A state prisoner brought a § 1983 action, challenging restrictions on his participation in special programs. The district court dismissed the case for failure to exhaust administrative remedies and the prisoner appealed. The appeals court reversed, finding that the state prisoner, for whom no further level of administrative review remained available after his appeal of a disciplinary action was deemed time-barred, had exhausted administrative remedies as required under the Prison Litigation Reform Act (PLRA). (San Quentin State Prison, California)

U.S. District Court
LEGAL MATERIAL

Nwaokocha v. Sadowski, 369 F.Supp.2d 362 (E.D.N.Y. 2005). A federal prisoner brought a Federal Tort Claims Act (FTCA) and Bivens action challenging the conditions of his confinement and alleging the loss of personal items, including legal papers. The district court held that the prisoner's right of access to courts was not violated by the apparently negligent misplacement of some of his personal belongings and legal possessions during prison transfers, absent any evidence that the loss was malicious. (Metropolitan Detention Center, Federal Bureau of Prison, Brooklyn, New York)

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

Patel v. Fleming, 415 F.3d 1105 (10th Cir. 2005). A pro se prisoner brought a § 1983 action against prison officials, challenging his conditions of incarceration at two federal correctional facilities. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the prisoner failed to meet the exhaustion requirements of the Prison

Litigation Reform Act (PLRA). The prisoner alleged that his Eighth Amendment rights were violated by his forced exposure to secondhand smoke. (Federal Correctional Institute, El Reno, and Federal Transfer Center, Oklahoma)

U.S. Appeals Court
LAW LIBRARY
LEGAL ASSISTANCE
PRIVILEGED COMMUNICATION

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 court found that the detainee did not suffer an actual injury as the result of the violation of his right of access to the courts. The inmate was not provided with access to a law library and the lawyer who assisted him would only retrieve case law when a specific citation was provided. The detainee did not allege that he had missed court dates, been unable to make timely legal filings, been denied legal assistance to which he was entitled, or lost a case which could have been won. The court precluded the detainee's *Bivens* claim for damages under eavesdropping and breach of privacy statutes because state law provided the detainee with a cause of action. The detainee challenged the failure of the facility to provide him with unmonitored calls to his attorney. (Corrections Corporation of America, Leavenworth, Kansas)

U.S. District Court
IN FORMA PAUPERIS

Reimann v. Frank, 397 F.Supp.2d 1059 (W.D.Wis. 2005). A state prison inmate sued various correctional officials under § 1983 alleging violations of his constitutional rights. The inmate petitioned for the right to proceed in forma pauperis and the district court granted the petition in part, and denied it in part. The court held that denial of weight training facilities was not an Eighth Amendment violation where there was no showing that a corrections official knew that weight training was necessary to treat the inmate's femoral neuropathy and other leg ailments. The court also held that a warden and nurse practitioner did not violate the inmate's Eighth Amendment rights by denying him access to indoor recreational facilities that were needed for the rehabilitation of his leg. They had been following a regulation that barred inmates who were on "low bunk restriction" due to medical conditions from indoor recreation. The court found that the inmate stated an Eighth Amendment claim with his allegations that a nurse practitioner countermanded an earlier order of a physician that only soft restraints were to be used. The court noted that there was a possibility that the nurse practitioner sought to deliberately inflict pain, rather than implement a differing medical assessment of the inmate's condition. (Stanley Correctional Institution, Wisconsin)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

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 Correctional Institution, Tehachapi, California)

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

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. (Puerto Rico)

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

Sanchez-Ramos v. Sniezek, 370 F.Supp.2d 652 (N.D.Ohio 2005). A federal prisoner brought a *Bivens* action against prison officials alleging he was assaulted by a corrections officer and denied proper medical care. The district court dismissed the case, finding that the prisoner had not exhausted all available administrative remedies as required by the Prison Litigation Reform Act (PLRA). The court noted that the prisoner was required to exhaust remedies with respect to each allegation against each defendant, and to specifically grieve allegations of retaliation or conspiracy against the defendants he named in his complaint. (Elkton Federal

Correctional Institution, Ohio)

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

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 held that the prisoner's failure to file a grievance regarding the alleged confiscation of his religious medallion meant that his § 1983 claim concerning that incident was barred by the Prison Litigation Reform Act (PLRA). But the court found that the prisoner's letters to a Muslim prison chaplain and prison officials were "grievances," and therefore his § 1983 claim for denial of his request for a vegetarian diet was not barred by PLRA because the letters contained all of the information required by the relevant regulations.

The court concluded that the prisoner's claim arising from confiscation of a newspaper, *The Five Percenter,* published by a Muslim organization was not barred by the exhaustion requirement of the Prison Litigation Reform Act (PLRA) because once the newspaper was deemed to be contraband and was confiscated, the confiscation became a non-grievable matter. The court denied qualified immunity for the officials who confiscated the newspaper, finding that it was well-established at the time of the confiscation that prisoners retain their First Amendment rights inside prison walls. (Massachusetts Correctional Institution, Cedar Junction)

U.S. District Court
PRIVILEGED CORRESPONDENCE

Shell v. Brzezniak, 365 F.Supp.2d 362 (W.D.N.Y. 2005). A prisoner filed a § 1983 action alleging that correctional officers violated his First and Eighth Amendment rights. After partial summary judgment was granted in favor of some defendants, the prisoner filed a motion to amend his complaint for the third time. The district court granted the motion in part, and denied it in part. The court held that the prisoner failed to state a valid § 1983 claim for denial of access to the courts due to interference with his legal mail, where the prisoner failed to show that the defendants' conduct had any impact on his pending legal action. (Attica, Green Haven, and Great Meadows Correctional Facilities, New York)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE
TRANSFER

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
FRIVOLOUS SUITS
PLRA- Prison Litigation Reform Act

Thomas v. Barker, 371 F.Supp.2d 636 (M.D.Pa. 2005). A jail inmate brought a pro se civil rights suit seeking to challenge the propriety of charges of escape and other crimes. The district court dismissed the case, finding that the inmate could not seek release from custody in a § 1983 action. The court noted that to the extent that the jail inmate was challenging the fact or duration of his confinement by attacking a sheriff's filing of charges against him, the claims had to be brought in a habeas corpus petition, rather than a civil rights action. The court also held that any claim for monetary damages based on a civil rights claim for allegedly unconstitutional imprisonment based on vindictive prosecution would not accrue in the inmate's favor under the *Heck* rule until such time as the charges were dismissed or convictions were reversed on direct appeal, expunged by a state tribunal, or called into question by the issuance of a federal writ of habeas corpus. The court found that the claims were legally frivolous and subject to dismissal under the Prison Litigation Reform Act (PLRA). (State Correctional Institution-Retreat, Pennsylvania)

U.S. District Court
FRIVOLOUS SUITS
PLRA- Prison Litigation Reform Act

Thomas v. Pennsylvania, 375 F.Supp.2d 406 (M.D.Pa. 2005). A prisoner brought a civil rights suit seeking damages and challenging revocation of his parole that resulted in his having to serve back time. The district court dismissed the case, finding that it was legally frivolous for the purposes of dismissal under the provisions of the Prison Litigation Reform Act (PLRA.) The court held that the prisoner was required to bring a habeas corpus petition to the extent that he challenged the fact or duration of his confinement. (State Correctional Institution-Retreat, Pennsylvania)

U.S. District Court
PRIVILEGED CORRESPONDENCE

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 held that opening three of the detainee's attorney letters outside of his presence did not violate his Fourteenth Amendment right to court access, where the letters were not confiscated and did not prevent the detainee from communicating with his attorney, and did not address matters of defense strategy. According to the court, the detainee failed to identify any conceivable way in which the information contained in the letters, even if read by jail officials, interfered with his defense or hindered his access to the courts. The court noted that respect for the Sixth and Fourteenth Amendments obliges a jail to open legal mail in the inmate's presence and to ensure it is not read. (Crow Wing County Jail, Minnesota)

U.S. Appeals Court
VIDEO COMMUNICATION

Thornton v. Snyder, 428 F.3d 690 (7th Cir. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging cruel and unusual punishment and seeking money damages. The district court granted summary judgment for the officials on a claim alleging intolerable cell conditions in which the inmate complained of the poor condition of his mattress. The court entered judgment on jury verdict for the officials on a second claim concerning yard exercise privileges. The inmate had alleged that officials denied him the privilege of yard exercise for 7½ months. The inmate appealed. The appeals court affirmed in part and reversed in part. The court reviewed the district court's decision to conduct the trial by videoconference, with the pro se inmate, defense counsel, and witnesses all appearing remotely. The court upheld the decision, noting that there was evidence that the inmate was a high escape risk and was aggressive, requiring two officers to escort him from the prison that was located 120 miles away. There were 20 potential witnesses from the state's corrections department who were scattered in various locations. The appeals court found that the district court put appropriate safeguards in place to allow jurors to see all parties at the same time. (Pontiac Correctional Center, Illinois)

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

Torres v. Corrections Corp. of America, 372 F.Supp.2d 1258 (N.D.Okla. 2005). A state prison inmate who was assaulted and battered by a prison officer brought a § 1983 action in state court against the corporate administrator of the prison, and also asserted a negligence claim. The district court dismissed the case in part and denied dismissal in part. The court held that the inmate's § 1983 claims were subject to the exhaustion requirements of the Prison Litigation Reform Act (PLRA). The court held that the inmate's state law claim of negligence against the corporate administrator of the prison did not fall within the ambit of PLRA's exhaustion of administrative remedies provision. (David L. Moss Criminal Justice Center, Oklahoma, operated by Corrections Corporation of America)

U.S. District Court
ACCESS TO ATTORNEY
EXHAUSTION

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 noted that the measures did not restrict the detainee's ability to help prepare his own defense. (Alexandria Detention Center, Virginia)

U.S. District Court
ACCESS TO ATTORNEY

U.S. v. Basciano, 369 F.Supp.2d 344 (E.D.N.Y. 2005). A purported crime boss who was being held as a pretrial detainee petitioned for a writ of habeas corpus, challenging his detention in a restrictive special housing unit. The district court granted the petition, finding that indefinite solitary confinement of the detainee was not reasonably related to the government's legitimate objective of preventing the detainee from allegedly planning or approving violent criminal conduct while behind bars. The court held that to justify such "harsh" detention, more substantial proof was required that the detainee committed or directed the crime of murder in aid of racketeering while in detention, or had conspired with another inmate to murder a federal prosecutor. According to the court, the security restrictions placed obstacles on the detainee's communications with his attorneys, which was especially important because the detainee was charged with a crime for which he could receive the death penalty. (Federal Bureau of Prisons, Metropolitan Correctional Center, Manhattan, New York)

U.S. District Court
INITIAL APPEARANCE

U.S. v. Johnson, 352 F.Supp.2d 596 (D.Md. 2005). A detainee challenged his two-and-a-half day delay in being presented to a judicial officer after his arrest. The court found that the delay was reasonable, and was necessitated by the detainee's urgent need to receive medical care. (Western District Police Station and Central Booking, Baltimore, Maryland)

U.S. District Court
CIVIL SUITS
LIEN

U.S. v. Martin, 356 F.Supp.2d 621 (W.D.Va. 2005). The United States filed a complaint alleging that federal inmates knowingly filed financial papers in which they falsely identified themselves as secure parties, intending to harm the creditworthiness and reputations of federal judges and prison officials. The district court held that the commercial liens filed by the inmates were null and void and imposed a permanent injunction barring federal inmates from filing financial statements or liens without prior court approval. (U.S. Penitentiary, Lee

County, Virginia)

U.S. District Court
EXHAUSTION

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
EXHAUSTION
PLRA- Prison Litigation Reform Act

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
LAW LIBRARY
LEGAL ASSISTANCE

White v. Kautsky, 386 F.Supp.2d 1042 (N.D.Iowa, 2005). A state prison inmate sued a state corrections director and a warden, claiming that a policy that did not allow attorneys to do legal research for inmates in appropriate cases violated his right to have access to the courts. The district court held that the inmate was injured by the policy for the purposes of a constitutional claim, where he did not pursue his non-frivolous claim that noncompliance with extradition procedures invalidated his conviction. The court concluded that the corrections department did not provide the inmate with a reasonably adequate opportunity to present claimed violations, where there was no legal library and the attorney who was provided to consult with the inmate was only allowed to confer and consult about the lack of merit of any proposed litigation, without being allowed to conduct any legal research. The court noted that the inmate's question that required research carried a great deal of significance for the inmate. The court awarded only nominal damages in the amount of $1 and held that the inmate was not entitled to the compensatory damages he had requested, equal to the estimated amount of legal fees that would have been incurred with his lawsuit. The court declined to award punitive damages where there was no showing that the department acted maliciously when it provided attorneys to inmates for the limited purpose of advising and conferring, but did not allow the attorneys to conduct any legal research. (Anamosa State Penitentiary, Iowa)

U.S. Appeals Court
EXPERT WITNESS

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 found that the administratrix's expert failed to identify what specific type of training would have alerted officers to the fact that the detainee was suicidal. (Lawrence County Correctional Facility, Pennsylvania)

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

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 that 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)

U.S. District Court
LEGAL MATERIAL

Ziemba v. Thomas, 390 F.Supp.2d 136 (D.Conn. 2005). An inmate brought a § 1983 action against state officials, alleging use of force and related civil rights violations. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the alleged failure of prison officials to return his legal materials did not hinder his access to courts, as required to maintain a claim under § 1983, where there was no reliable evidence that any actual injury stemmed from the alleged violation. (Corrigan Correctional Institution, Connecticut)

2006

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

Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). A detainee brought an action against the United States Marshals Service, various county jails where he was detained, doctors in a federal prison, a private medical center, a private doctor, and others, alleging claims under § 1983 and the Federal Tort Claims Act (FTCA), and alleging negligence under state law. The district court dismissed the action and the detainee appealed. The appeals court affirmed. The court held that filing of an administrative claim with the United States Marshals Service was insufficient to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA), for the purpose of § 1983 claims against county jails and a federal prison doctor. The court noted that administrative claims against the county jails had to be directed to those facilities, and claims alleging wrongdoing by a doctor at a federal prison had to be filed with the federal Bureau of Prisons. The court ruled that FTCA claims against county facilities were barred by the independent contractor exemption of the FTCA. According to the court, allegations did not state deliberate indifference claims against a private medical center or a private doctor with allegations that someone at a private medical center overmedicated him, and that a private doctor failed to properly diagnose the severity of his foot injury. The detainee had been arrested on federal drug and firearm charges and he was held without bail. During his pretrial detention, the United States Marshals Service lodged him in several county jail facilities with which it contracts, and he also spent time in two federal facilities. (Hillsborough County Department of Corrections, NH; Cumberland County Jail, Maine; Merrimack County House of Corrections, NH; FMC Rochester, MN; Strafford County House of Corrections, NH; FCI Raybrook, NY)

U.S. District Court
ACCESS TO COUNSEL

Adem v. Bush, 425 F.Supp.2d 7 (D.D.C. 2006). In a habeas case, the petitioner, who was detained at the United States Naval Base in Guantanamo Bay, Cuba, filed a motion to hold federal respondents in contempt of a protective order governing access to counsel for Guantanamo detainees and a motion to expedite his access to counsel. The district court held that the protective order did not require evidence of authority to represent a detainee as a prerequisite to counsel meeting with a detainee, but rather, the protective order provided that counsel who purportedly represented a particular detainee provide evidence of their authority to represent that detainee within 10 days of counsel's second visit with the detainee. (United States at the Naval Base, Guantanamo Bay, Cuba)

U.S. Appeals Court
EXPERT WITNESS

Alberson v. Norris, 458 F.3d 762 (8th Cir. 2006). A state prisoner's mother, on the prisoner's behalf and as the special administrator of his estate, brought a § 1983 action against prison officials, alleging deliberate indifference with respect to the medical treatment of the prisoner, who died from complications arising from Goodpasture Syndrome. The district court granted summary judgment to the defendants and the mother appealed. The appeals court affirmed, finding that Goodpasture Syndrome was a sophisticated medical condition, and thus, the estate, which was alleging inadequate medical treatment, was required to present expert testimony proving causation. The court noted that after the prisoner complained of earaches and other afflictions, he received extensive medical treatment, including treatment from a physician on six separate dates in a period of about two months, followed shortly thereafter by admission to the infirmary ward. (Wrightsville Unit, Arkansas Department of Corrections)

U.S. District Court
RETALIATION FOR LEGAL ACTION

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
RETALIATION FOR LEGAL ACTION
LEGAL MATERIAL

Bacon v. Taylor, 414 F.Supp.2d 475 (D.Del. 2006). A state prisoner brought a § 1983 action against three correctional officers, alleging denial of his First Amendment right of access to courts, retaliation for exercising his First Amendment free speech rights, and cruel and unusual punishment in violation of the Eighth Amendment. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that the prisoner's allegations that a correctional officer, on one occasion, smoked a cigarette on the tier by another inmate's cell and blew smoke into that inmate's cell, and that on several occasions the correctional officer smoked in the isolated control pod, did not sufficiently allege that the prisoner was exposed to unreasonably high levels of environmental tobacco smoke (ETS) to the degree necessary to state claim a under § 1983 for violation of the Eighth Amendment. The court found that the prisoner's allegation that a correctional officer opened and read the draft of his lawsuit against her and then refused to return it to him did not sufficiently allege an actual injury as required to state a claim under § 1983 for violation of First Amendment constitutional right of access to the courts. The prisoner alleged only that as a result of not receiving his original draft back he had forgotten the exact dates he saw the officer smoking in the prison, but the prisoner did not allege that his inability to remember specific dates had unduly prejudiced his case against the officer. The court held that summary judgment was precluded by a genuine issue of material fact as to whether prison authorities could have reasonably interpreted the prisoner's draft of a § 1983 lawsuit against a correctional officer as a threat to the security and safety of the prison, or that a reasonable person would have known that the document was the draft of a legal complaint against the officer, justifying his placement in administrative segregation rather than constituting retaliation for the prisoner having exercised his First Amendment free speech rights by drafting the lawsuit against the officer. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
PRIVILEGED CORRES-PONDENCE
FRIVOLOUS SUITS

Barber v. U.S. Attorney General, 458 F.Supp.2d 1378 (S.D.Ga. 2006). An inmate filed a pro se action against the United States Attorney General. The district court held that the inmate's repeated filing of frivolous pro se actions in district courts warranted imposition of a sanction permitting the warden to open and inspect each outgoing envelope from the inmate addressed to a court, to withhold postage from any document that was not a notice of appeal (NOA) from the sanction order, and to block all of the inmate's mail to court if he used his own resources to pay postage. The court opened its opinion by stating "inmate-plaintiff Edward Barber's recreational-litigation days have come to an end." (Georgia)

U.S. District Court
APPOINTED ATTORNEY

Barbour v. Haley, 410 F.Supp.2d 1120 (M.D.Ala. 2006). A class of death row inmates brought a § 1983 action alleging that the state's denial of legal assistance prior to their filing of postconviction challenges deprived them of their right of access to courts. The district court held that Alabama's failure to provide counsel to indigent death row inmates for investigation and preparation of postconviction challenges to their convictions did not violate their federal constitutional right of meaningful access to courts. According to the court, indigent death row inmates had no Sixth Amendment right to appointment of counsel prior to their filing of postconviction petitions. The court held that death row inmates could not challenge Alabama's postconviction relief procedures as being so onerous that they constituted denial of their right of access to courts, without identifying some existing claim that had been lost, or whose presentation had been hindered, as the result of the challenged procedures. (Alabama Department of Corrections)

U.S. Appeals Court
LEGAL ASSISTANCE

Barbour v. Haley, 471 F.3d 1222 (11th Cir. 2006). Death row inmates brought a § 1983 class action, alleging that Alabama's failure to provide them with legal assistance prior to their filing post-conviction challenges deprived them of their Fourteenth Amendment right of access to the courts. The district court entered judgment for the state, and plaintiffs appealed. The appeals court affirmed. The court held that death-sentenced inmates have no federal constitutional right to counsel for the preparation and presentation of claims for post-

conviction relief, as part of Fourteenth Amendment right of access to courts, and that the inmates were not entitled to relief on their claim for a lesser form of legal assistance than provision of counsel. The court noted that death-sentenced inmates have no Sixth or Eighth Amendment right to post-conviction counsel. (William E. Donaldson Correctional Facility and Holman State Prison, Alabama)

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

Bell v. Konteh, 450 F.3d 651 (6th Cir. 2006). A state prison inmate brought pro se § 1983 action against a prison's warden and correction officers, alleging they failed to protect him from violence by the other inmates in violation of the Eighth Amendment. The district court dismissed the action, citing the inmate's failure to comply with the requirements of the Prison Litigation Reform Act (PLRA). The inmate appealed and the appeals court reversed. The appeals court held that the inmate had satisfied the adequate-control component of PLRA's exhaustion requirement with respect to his claim against the warden, given the details contained in two grievances he filed against the warden. The inmate had filed a pair of grievances that, together, alleged that the warden had the inmate moved to a different unit for no justifiable reason, that both the inmate and his case manager had informed the warden that the inmate could be in danger if housed with the other prisoners in that unit, and that the inmate was subsequently attacked by two fellow prisoners in his cell while sleeping. (Trumbull Correctional Institution, Ohio)

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

Campos v. Correction Officer Smith, 418 F.Supp.2d 277 (W.D.N.Y. 2006). A state inmate filed a § 1983 action alleging that correctional officers violated his constitutional rights by failing to protect him from an assault by a fellow inmate and used excessive force against him. The district court granted the officers' motion for summary judgment. The court held that dismissal was an appropriate sanction for the inmate's submission of a falsified document, and that the inmate failed to exhaust his administrative remedies. The inmate had submitted a document to support his claim that he had exhausted his administrative appeals and the court found it was falsified. The inmate contended that his failure to file a timely appeal of the denial of his grievance was due to prison officials' interception of his outgoing mail. The court found that the inmate's contention was supported only by an obviously sham, backdated letter, and was otherwise purely conclusory. According to the court, "The conclusion is inescapable, then, that plaintiff has knowingly submitted a falsified exhibit in an attempt to rebut defendants' contention that he never appealed the '03 grievance." (Attica Correctional Facility, New York)

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

Dole v. Chandler, 438 F.3d 804 (7th Cir. 2006). A prisoner brought a § 1983 action against correction officers, alleging he was beaten in retaliation for punching an assistant warden. The district court granted summary judgment in favor of the defendants on the ground that the prisoner failed to exhaust administrative remedies and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner exhausted his administrative remedies, even though his grievance was lost and was not received by a board. The court noted that the exhaustion of administrative remedies is necessary under the Prison Litigation Reform Act (PLRA) even if the prisoner is requesting relief that the relevant administrative review board has no power to grant, such as monetary damages, or if the prisoner believes that exhaustion is futile. But the court found that prison officials may not take unfair advantage of the exhaustion requirement and that an administrative remedy becomes unavailable if prison employees do not respond to a properly filed grievance or otherwise use affirmative misconduct to prevent a prisoner from exhausting. (Menard Correctional Center, Illinois)

U.S. District Court
LEGAL MATERIAL
PRIVILEGED CORRES-PONDENCE

Felton v. Lincoln, 429 F.Supp.2d 226 (D.Mass. 2006). Federal prisoner brought civil rights action under § 1983 against jail officials, in their individual and official capacities, asserting claims for violations of his constitutional rights. The prisoner alleged that jail personnel wrongfully reviewed and confiscated material which was part of the discovery in his underlying criminal case and which had been sent to him by counsel, that he was wrongfully disciplined for possessing such material, and that there was wrongful interference with other incoming and outgoing mail, in violation of various regulations. The district court held that: (1) the temporary confiscation of the prisoner's legal materials did not violate his rights to due process and to meaningful access to courts, where the prisoner's counsel engaged in extensive discussions with prison personnel to make sure that the material was available for the prisoner's review in preparation for his trial, and the prisoner's defense was in no way impaired as a result of having the material temporarily confiscated; (2) the alleged wrongful disciplinary isolation imposed against the prisoner for possessing the legal material did not violate prisoner's right to due process; (3) officials' alleged failure to allow prisoner to be represented at disciplinary hearing did not amount to a violation of the prisoner's constitutional rights; (4) any wrongful interference with the prisoner's incoming and outgoing mail, in violation of various regulations, was de minimis, and did not rise to level of a constitutional violation; (5) the sheriff had qualified immunity where the prisoner failed to show that the sheriff actually participated in acts that allegedly deprived prisoner of his constitutional rights, formulated a policy of tolerating such violations, or was deliberately indifferent; but (6) a genuine issue of material fact existed as to whether a prison director,

captain, and deputy superintendent were personally involved in acts that allegedly deprived the prisoner of his constitutional rights, precluding summary judgment for those officials on basis of qualified immunity. (Plymouth County Correctional Facility, Massachusetts)

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

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

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

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. (State Correctional Institution at Mahanoy, Pennsylvania)

U.S. District Court
ACCESS TO COUNSEL

Glisson v. Sangamon County Sheriff's Department, 408 F.Supp.2d 609 (C.D.Ill. 2006). A detainee brought a civil rights action against county defendants and a police officer, alleging various violations of his constitutional rights in connection with his arrest and detention. The defendants moved to dismiss. The district court dismissed in part and declined to dismiss in part. The court held that the detainee sufficiently stated claims under the Eighth Amendment and Due Process Clause of the Fourteenth Amendment against a jail and a correctional officer with respect to both his first and second detentions. The court found that the detainee, who was awaiting a probation revocation hearing, sufficiently stated a claim under the Eighth and Fourteenth Amendments by alleging that the county jail maintained policies and customs that tolerated cruel and unusual punishment of convicted prisoners and pretrial detainees, and that the correctional officer strapped him to a wheelchair for several hours, forcing him to urinate on himself and to sit in his urine for several hours, while he was in a manic state. The inmate alleged that the jail and correctional officer knew of his mental condition because it was documented and that the officer's and jail's acts were intentional with malice and reckless I disregard for his federally protected rights. The court held that the detainee sufficiently stated denial of access to courts claims against a county jail and correctional officers by alleging that the jail maintained a policy and practice of arbitrarily denying inmates' confidential consultations with their attorneys and that the officers directly participated in the arbitrary and capricious denial of his access to counsel. The court found that the detainee stated an equal protection claim against a county jail and officer by alleging that the jail maintained a policy and practice that discriminated against him because of his mental illness, and that an officer discriminated against him in terms of the type of confinement on the basis of his mental illness. (Sangamon County Jail, Village of Grandview Police, Illinois)

U.S. Appeals Court
PLRA- Prison Litigation Reform Act
EXHAUSTION
IN FORMA PAUPERIS

Green v. Young, 454 F.3d 405 (4th Cir. 2006). The district court dismissed on its merits a prisoner's civil rights suit that alleged various state prison officials were deliberately indifferent to his serious medical needs. The prisoner appealed and moved to proceed without prepayment of fees. The appeals court held that routine dismissal under the Prison Litigation Reform Act (PLRA) for failure to exhaust the administrative remedies does not count as a "strike" for the purpose of the Three-Strike Rule limiting in forma pauperis filings. The court cited the PLRA provision prohibiting a prisoner who has filed three previous suits that were dismissed as frivolous, malicious, or for failure to state a claim, from proceeding in forma pauperis in subsequent suits. (Virginia)

U.S. District Court
ACCESS TO ATTORNEY

J.P. v. Taft, 439 F.Supp.2d 793 (S.D.Ohio 2006). A former juvenile corrections facility inmate sued the facility and individuals, claiming the lack of access to courts to pursue a claim of injury from being assaulted by an officer, and claims of substandard accommodations. The district court denied the defendants' motion for summary judgment. The court held that the inmate had standing to bring a claim that the facility interfered with his access to courts by not making adequate efforts to provide attorneys, and that the inmate stated a claim that the

facility interfered with his right of access to court, by not providing an attorney to pursue a legitimate claim that officers unconstitutionally restricted his bathroom privileges. (Ohio Department of Youth Services, Marion Juvenile Correctional Facility)

U.S. Appeals Court
PRIVILEGED CORRES-PONDENCE

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. District Court
PLRA- Prison Litigation Reform Act
EXHAUSTION

Laird v. Mattox, 430 F.Supp.2d 636 (E.D.Tex. 2006) An inmate filed a § 1983 suit complaining of alleged violations of his constitutional rights during his confinement. The district court dismissed the case *in toto*, finding that the inmate failed to exhaust administrative remedies as required under the Prison Litigation Reform Act (PLRA). The court noted that completion of the exhaustion of administrative remedies process is a mandatory prerequisite for an inmate's filing of a § 1983 suit with respect to prison conditions, and that even complete exhaustion following the filing of the lawsuit is not sufficient. (Texas Department of Criminal Justice, Correctional Institutions Division, Gib Lewis Unit)

U.S. Appeals Court
APPOINTED ATTORNEY

Lindell v. Houser, 442 F.3d 1033 (7th Cir. 2006). A white-supremacist inmate brought an action alleging that prison official violated the Eighth Amendment by housing him with a black inmate. The district court entered summary judgment in favor of the official and the inmate appealed. The court of appeals held that the official did not violate the inmate's Eighth Amendment rights by placing him in a cell with a black inmate, even though the official knew of the black inmate's involvement with a gang and the white inmate's expression of fear. The court found that the official did not have reason to believe that the white inmate was at a serious risk since eighteen months had passed without incident after the cellmates' initial fight and nothing indicated specific threats had been made by the black inmate or other members of the gang. The court noted that the inmate had no constitutional right to be housed with members of his own race, culture, or temperament. The court held that the inmate was not entitled to a court-appointed lawyer to help him prosecute his case against prison officials, noting that the inmate was experienced in litigation, and that any difficulty prosecuting his case was largely caused by the inmate's choice to pursue other cases at the same time. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
PRIVILEGED CORRES-PONDENCE

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) a claim was stated under the Fourth Amendment; (2) there was no qualified immunity from the Fourth Amendment claim; (3) a claim of personal involvement by a warden was stated; and (4) 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, Fed. Bureau of Prisons, N.Y.)

U.S. Appeals Court
INITIAL APPEARANCE
INTERROGATION

Lopez v. City of Chicago, 464 F.3d 711 (7th Cir. 2006). An arrestee brought an action against a city and city police officers, alleging the duration and conditions of his detention violated his Fourth and Fourteenth Amendment rights, and asserting a claim for intentional infliction of emotional distress. The district court entered judgment as matter of law in favor of the defendants. The arrestee appealed. The appeals court reversed and remanded. The court found that the police officers violated the arrestee's Fourth Amendment right to a prompt judicial probable cause determination by holding him for a period of five days after his arrest without

a probable cause hearing, for the purpose of arrestee's § 1983 Fourth Amendment claim, absent any justification for the delay. The arrestee had been arrested for a murder he did not commit. Following his arrest, the defendants-- all police detectives-- kept him shackled to the wall of a windowless, nine-by-seven-foot interrogation room for four days and nights while they investigated the case. The arrestee had nowhere to sleep but a four-foot-by-ten-inch metal bench or the dirty brick floor. The interrogation room had no toilet or sink; he had to "scream" for the detectives to let him out to use a bathroom. He was given only one bologna sandwich and one serving of juice as food and drink during the entire four days and nights that he was kept in the interrogation room. The detectives questioned him from time to time and made him stand in two lineups. After two-and-a-half days in these conditions, the arrestee started to become disoriented and began hearing voices telling him to confess. He ultimately gave a statement containing a false confession that did not match the details of the crime. On the fifth day of his detention, the arrestee was moved to a city lockup, charged, and finally taken to court. The following day, the police investigation led detectives to another individual who confessed to the murder. The arrestee was released the next day. (Chicago Police Department's Area 5, Illinois)

U.S. District Court
TRANSFER

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 held that prison officials did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) when they prohibited the inmate from affixing "magic seals," presumably part of the inmate's practice of religion involving magic, to the walls of his cell. 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
LAW LIBRARY

Marshall v. Knight, 445 F.3d 965 (7th Cir. 2006). A pro se state prisoner brought a § 1983 action against a prison superintendent and other unnamed prison employees, alleging that they unconstitutionally deprived him of access to the courts by impeding his access to the prison law library. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's allegations stated a § 1983 claim for unconstitutional denial of the prisoner's right of access to the courts. The prisoner alleged that a prison superintendent and other unnamed prison employees enforced policies that diminished his access to the prison law library to the point of being non-existent, and that his lack of library access adversely affected his attempt to challenge the length of his incarceration. The appeals court found that these allegations were sufficient, when liberally construed, to state a § 1983 claim for unconstitutional denial of the prisoner's right of access to the courts. (Miami Correctional Facility, Indiana)

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

Michau v. Charleston County, S.C., 434 F.3d 725 (4th Cir. 2006). A former state prison inmate who was being detained under a state's Sexually Violent Predator Act (SVPA) brought civil actions. The district court dismissed the complaints for failure to state a claim and the inmate appealed. The appeals court affirmed. The court held that the former inmate was not a "prisoner" for the purposes of the Prison Litigation Reform Act (PLRA) and therefore his complaint was not subject to the PLRA's screening requirements. The court noted that the former inmate was under "civil detention" not "criminal detention." The court held that the former inmate's complaint failed to state a claim for damages for denial of access to a law library, where the complaint did not explain how he was injured by any limitations on his access to the law library. (Charleston County Detention Center, South Carolina)

U.S. District Court
LEGAL MATERIAL
LAW LIBRARY
ACCESS TO COUNSEL

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 the inmate's alleged weight loss while he was a pretrial detainee at the county jail did not satisfy the section of the Prison Litigation Reform Act (PLRA) requiring a showing of physical injury in addition to mental or emotional injury in order to obtain compensatory damages. The court held that the detainee was not deprived of access to the courts and competent counsel, even if he was not permitted direct, physical access to a law library, was not separately assigned a paralegal to assist him, and was unable to call counsel on a few instances, where the detainee was given frequent and heavy access to law library materials, the county had limited resources for providing physical access to a law library, the detainee was an able and experienced prison litigator, the detainee decided not to file civil actions while at the jail, the detainee spoke with counsel on many occasions, and the detainee was satisfied with counsel's representation. (Edwards County Jail, Kansas)

U.S. Appeals Court
LAW 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. 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
SEARCHES

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
PLRA- Prison Litigation Reform Act
EXHAUSTION

Nelson v. Warden of C.F.C.F., 461 F.Supp.2d 316 (E.D.Pa. 2006). A state prisoner brought a § 1983 action against warden, corrections officers, and others, challenging his medical quarantine. The corrections officers moved for summary judgment. The district court granted the motion, finding that the prisoner failed to exhaust his administrative remedies, so that his suit was barred under the Prison Litigation Reform Act (PLRA). Although the prisoner received an inmate handbook explaining the rules and procedures for filing an administrative grievance, he failed to file a grievance challenging the medical quarantine. (Curran-Fromhold Correctional Facility, Philadelphia, Pennsylvania)

U.S. District Court
LAW LIBRARY
ACCESS TO COUNSEL
SEARCHES
RETALIATION

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 held that the officials did not deny the inmate's request to call an attorney, and thus did not violate the inmate's First Amendment right to access courts, where the officials made several attempts to contact the inmate's attorney but were told that she was too busy or did not want to speak to the inmate, the attorney had filed a motion to withdraw as the inmate's counsel, and the public defender's office informed the officials that the inmate was not a client. According to the court, the officials gave the inmate adequate law library time and legal assistance, and thus did not violate the inmate's First Amendment right to access courts, even though the inmate did not have access to the prison's legal resources 24 hours per day. The court noted that during a two-and-a-half month period, the inmate requested and received law library services 23 times, and had access to the law library 77 times. 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 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. Appeals Court
APPOINTED ATTORNEY

Phillips v. Jasper County Jail, 437 F.3d 791 (8th Cir. 2006). An inmate at a county jail brought a § 1983 action against various jail employees and the jail's doctor, alleging violation of his constitutional rights. The district court granted the defendants' motions for summary judgment and the inmate appealed. The court of appeals held that the inmate was not entitled to appointed counsel where discovery had just begun at the time the inmate requested counsel and there was no conflicting testimony, there was no indication that the inmate was unable to investigate or present his case, the inmate correctly identified the applicable legal standard governing his claims and successfully amended his complaint to include essential information, his claims involved information readily available to him, the inmate was able to avoid procedural default, the complaint was sufficient to survive the first motion for summary judgment, and the inmate had been able to file more than thirty documents with the court. The court held that the jail's doctor who prescribed anti-seizure medicine to the inmate was not deliberately indifferent to the inmate's serious medical needs, even though the medication prescribed was different from the medication the inmate had taken in the past. According to the court, the doctor did not know that the medication prescribed would present a danger to the inmate or that he was prescribing less medication than was required. The court found that summary judgment was precluded by a genuine issue of material fact regarding whether jail employees assigned the inmate to a top bunk, despite the fact that he suffered from a seizure disorder. (Jasper County Jail, Missouri)

U.S. Appeals Court
LAW BOOKS
LEGAL MATERIAL
WRITING MATERIAL

Pratt v. Tarr, 464 F.3d 730 (7th Cir. 2006). A state prison inmate brought a pro se § 1983 action against prison officials, alleging that the officials had violated his right of access to the courts by denying him adequate materials. The district court granted the officials' motion for judgment on the pleadings, and the inmate appealed. The appeals court reversed, finding that the inmate stated a claim by alleging that the officials' denial of adequate materials had caused him to lose court cases, and by submitting information about those cases. In his complaint, the inmate alleged that officials "den[ied] him adequate scribe materials, a desk, a chair and personal legal property to defend pending litigation in state and federal courts, which caused plaintiff's cases to now be lost and/or dismissed" and that the officials "violate[d] access to the courts' standards by refusing to release law books, briefs, transcripts, case law materials, [and] carbon paper." (Wisconsin)

U.S. District Court
RETALIATION FOR LEGAL ACTION

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
RETALIATION FOR LEGAL ACTION
TRANSFER

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. District Court
PLRA- Prison Litigation Reform Act
EXHAUSTION

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that "rules" on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment

received from the physician's assistant to allow those concerns to be dealt with administratively. (Merrimack County House of Corrections, New Hampshire)

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

Roles v. Maddox, 439 F.3d 1016 (9th Cir. 2006). A prisoner brought a pro se § 1983 claim asserting violations of his First and Fourteenth Amendment rights in connection with the confiscation of magazines by prison officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the exhaustion requirement of the Prison Litigation Reform Act (PLRA) applied to prisoners who were held in private prisons, and the prisoner's claim that his constitutional rights were violated by the confiscation of his magazines was subject to the PLRA exhaustion requirement. (Idaho Correctional Center, operated by Corrections Corporation of America, Inc.)

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

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. District Court
PLRA- Prison Litigation Reform Act

Scott v. Ozmint, 467 F.Supp.2d 564 (D.S.C. 2006). A state prisoner brought a civil rights action seeking an injunction requiring a state corrections director and prison chaplains to recognize the Neterian faith as a religion. The defendants moved for summary judgment and the district court granted the motion. The court held that: (1) the prisoner did not satisfy the requirement of the Prison Litigation Reform Act (PLRA) that he show physical injury as required for a civil rights suit for mental or emotional injury; and (2) the decision was reasonably related to legitimate penological concerns. (McCormick Correctional Institution, South Carolina)

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 held that placement of the civilly-committed sex offender in isolation because of rule infractions did not infringe on his procedural due process rights, given that his commitment was indefinite, that he received notice and had the right to be heard, that the decision to use isolation was a discretionary decision by state officials, and that the State had a vital interest in maintaining a secure environment. 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
LAW LIBRARY
PHOTOCOPYING
LEGAL MATERIAL

Shidler v. Moore, 409 F.Supp.2d 1060 (N.D.Ind. 2006). A prisoner brought a pro se action against prison officials under § 1983 and Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging denial of his rights to worship, to petition for redress of grievances, and to have access to courts. The prisoner requested a preliminary injunction and the district court denied the request. The court held that the prisoner stated cause of action against prison officials under § 1983 seeking monetary damages for First Amendment and RLUIPA violations by alleging that all inmates in his housing unit were denied communal worship. The court noted that the statute prohibiting prisoners from bringing federal civil actions for mental or emotional injury absent a showing of physical injury does not restrict damages in a First Amendment constitutional claim. The court found that the prisoner stated cause of action for First Amendment violations in § 1983 complaint against a prison chaplain and administrative assistant, in connection with alleged denial of communal worship, in that it was reasonable to infer from the prisoner's factual allegations that such officials might have implemented or

enforced, or could have lifted, the restrictions at issue while the prisoner was in certain housing units. The court ruled that prison officials' alleged actions of denying the prisoner access to a law library, denying him the ability to make copies, and confiscating his legal materials, if proven, did not violate his constitutional right of access to courts, in that he could write to the court and thus could file a complaint, he could send an original document and state that he was unable to obtain copies, and he did not maintain that unreturned legal papers were not replaceable. The court noted that there is no abstract, freestanding right to a law library, and a prisoners' constitutional right of access to courts goes no further than access. The court found that the confiscation of a prisoner's legal paperwork is merely a property loss, not a denial of the constitutional right of access to courts, if the papers are replaceable. (Miami Correctional Facility, Indiana)

U.S. Appeals Court
FRIVOLOUS SUITS
PRE SE LITIGATION

Sieverding v. Colorado Bar Ass'n, 469 F.3d 1340 (10th Cir. 2006). A pro se plaintiff petitioned for a writ of mandamus challenging the filing restrictions imposed by the United States District Court for the District of Colorado, that prohibited filing of a pro se action in any court without the district court's approval. The appeals court held that the filing restrictions were overbroad as to appellate courts, state courts, and district courts in other circuits and should have been limited to a ban on suits on any subject matter against the persons, entities, counsel, and insurance companies of the parties involved in prior litigation by the plaintiff. The court noted that the right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious. The court also found that a federal district court in the District of Colorado may impose filing restrictions that include other federal district courts within the Tenth Circuit, but it is not appropriate to extend those restrictions to include federal district courts outside the Tenth Circuit, nor is it reasonable for a court in the Tenth Circuit to speak on behalf of courts in other circuits as those courts are capable of taking appropriate action on their own. (United States District Court for the District of Colorado)

U.S. Appeals Court
RETALIATION FOR
LEGAL ACTION

Simpson v. Nickel, 450 F.3d 303 (7th Cir. 2006). A state inmate filed a § 1983 action alleging that prison officials retaliated against him for exercising his First Amendment rights. The inmate asserted that, after he wrote a letter and filed a suit complaining about abuse by the staff of the prison where he was confined, the targets of his accusations retaliated by issuing bogus conduct reports and arranging for him to be disciplined. The prisoner spent 300 days in segregation and lost 25 days of recreation privileges. The district court dismissed the complaint and the inmate appealed. The appeals court vacated and remanded. The court held: (1) the inmate was not required to establish or demonstrate in his complaint that the original speech was truthful where the complaint set out the inmate's grievance clearly enough to put officials on notice; (2) the inmate did not vouch for the correctness of the prison disciplinary board's findings against him because the board's report was included with his filing; and (3) the disciplinary board's finding did not collaterally prevent the inmate from filing the § 1983 action. (Wisconsin)

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

Skinner v. Uphoff, 410 F.Supp.2d 1104 (D.Wyo. 2006). A state prison inmate brought a § 1983 class action against prison officials, alleging failure to safeguard inmates against assaults by other inmates, and seeking individual compensatory as well as class injunctive relief. The district court granted injunctive relief and declaratory relief, finding that the defendants failed to adequately train and supervise employees, failed to properly review policy violations, and failed to properly discipline employees, all of which led to risks to inmate safety. In an effort to alleviate the problems at the prison, a remedial plan was adopted and approved by the court. The parties filed various motions to modify the remedial plan and the state moved for termination of the final decree. The district court granted the motions in part, and denied in part. The court held that state inmates and prison officials were entitled, under the remedial plan, to the opportunity to ask an outside investigator about reports of his investigation of suspected premeditated inmate-on-inmate assaults. The investigator was an independent contractor, and his reports bore directly upon whether officials were complying with plan. The court held that the inmates had the right under the Prison Litigation Reform Act (PLRA) to pursue discovery as to existence of the alleged ongoing and continuing constitutional violations before the court could terminate the remedial plan entered in the inmates' action challenging officials' responses to inmate-on-inmate violence. The court concluded that the inmates demonstrated good cause for a 60-day postponement of an automatic stay of the remedial plan after the officials filed a motion for termination, where the inmates made allegations of ongoing inmate-on-inmate violence and delays in the officials' remedial actions, and a joint expert raised various concerns. (Wyoming State Penitentiary)

U.S. District Court
PRIVILEGED CORRES-
PONDENCE

Strong v. Woodford, 428 F.Supp.2d 1082 (C.D.Cal. 2006). A prisoner filed a § 1983 action, alleging prison officials mishandled or destroyed his outgoing legal mail. The defendants filed a motion to dismiss. The district court held that the prisoner failed to state a First Amendment violation with respect to access to the courts and that the prisoner's allegations that prison officials negligently destroyed or mishandled his legal mail did not support an actionable claim under § 1983. The court held that the prisoner's allegations of supervisor

liability did not state a claim under § 1983 and that the officials were immune from liability for money damages or other retroactive relief. According to the court, a delay in filing a legal document without any attendant adverse consequences does not constitute actual harm, as required for an inmate to assert claims based on a denial of his First Amendment rights in legal correspondence. (California)

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

Upthegrove v. Kuka, 408 F.Supp.2d 708 (W.D.Wisc. 2006). An inmate brought a § 1983 action arising from an alleged failure to provide him with pain medication. The defendant officers moved for summary judgment. The district court granted the motion, finding that the inmate failed to file an inmate complaint so as to exhaust administrative remedies with respect to one correctional officer. The court found that a correctional sergeant who, prior to dispensing the inmate's pain medication, was called away to a prison emergency, did not act with deliberate indifference to the inmate's serious medical need because another officer replaced the sergeant and continued to dispense medications. The court noted that the inmate inexplicably did not remain in line to receive his medication and therefore any pain he suffered as the result of missing his medication was the result of his own choice, not of any Eighth Amendment violation. (Jackson Correctional Institution, Wisconsin)

U.S. Appeals Court
LAW BOOKS
LEGAL MATERIAL
LEGAL MAIL

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. Appeals Court
CLOTHING-COURT APPEARANCES

Williams v. Stewart, 441 F.3d 1030 (9th Cir. 2006). Following affirmance on the appeal of the defendant's state conviction for first degree murder and armed burglary in the first degree, and imposition of the death penalty, the defendant filed a petition for a writ of habeas corpus. The district court denied the petition and the defendant appealed. The court of appeals held that a witness's identification of the defendant, who appeared at a deposition in prison attire and manacles, did not violate due process. The court noted that the defendant compelled the witness to attend a deposition where it was obvious that he was the only suspect, and he chose to conduct the deposition himself rather than have advisory counsel do so. According to the court, while the manacles and prison garb were involuntary, they were reasonable in light of security concerns and added only marginally to the suggestiveness created by the defendant's voluntary presence and self-identification as the defendant. (Arizona Department of Corrections)

U.S. District Court
RETALIATION FOR LEGAL ACTION

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 held that an inmate's allegation that he was transferred to a housing unit with far fewer privileges after filing a civil rights action against the prison officials, in violation of his First Amendment right of access to courts, sufficiently alleged a retaliation claim against the officials, and that a genuine issue of material fact as to the reason for the inmate's transfer to a more restrictive facility precluded

summary judgment. (Delaware Department of Correction)

2007

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

Abdul-Muhammad v. *Kempker*, 486 F.3d 444 (8th Cir. 2007). State prisoners brought a § 1983 action against prison officials, challenging certain prison policies, and alleging that officials retaliated against them for filing an earlier lawsuit. The district court dismissed the complaint and the prisoners appealed. The appeals court affirmed. The United States Supreme Court vacated and remanded. On remand, the appeals court held that the district court could not dismiss the prisoner's claims without determining which of the prisoner's claims had been properly exhausted and which of the claims, if any, were meritorious. The court noted that if an inmate fails to exhaust one or more discrete claims raised in a § 1983 complaint, the Prison Litigation Reform Act (PLRA) requires only that the unexhausted claim or claims be dismissed, but does not require that the complaint be dismissed in its entirety. (Potosi Correctional Facility, Missouri)

U.S. District Court
STUN BELT
RESTRAINTS

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. Appeals Court
RECOUPMENT

Americans United for Separation of Church and State v. *Prison Fellowship Ministries, Inc.*, 509 F.3d 406 (8th Cir. 2007). A separation of church and state advocacy group, state prison inmates, and others, sued the State of Iowa and a Christian provider of rehabilitation services, claiming that funding of a contract with the Christian organization providing pre-release rehabilitation services to inmates violated the Establishment Clause. The district court granted declaratory and equitable relief in favor of advocacy group and the inmates. The provider and state corrections officials appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the state funding constituted an endorsement of religion, but that the district court abused its discretion in awarding recoupment of state funds that had been paid to the provider. The court noted that even though the provider had the ability to repay the funds, the district court gave no weight to the fact that specific statutes authorized the funding, made no finding of bad faith by the state legislature and governor, and did not consider the testimony of state prison officials that the program was beneficial and that the state received much more value than it paid for. (Iowa Department of Corrections)

U.S. Appeals Court
IN FORMA PAUPERIS
PLRA- Prison Litigation Reform Act

Andrews v. *Cervantes*, 493 F.3d 1047 (9th Cir. 2007). A prisoner filed a pro se action against prison officials, alleging that the threat he faced from contagious diseases violated the Eighth Amendment prohibition against cruel and unusual punishment. The prisoner sought leave to proceed in forma pauperis (IFP) but the district court denied the motion. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the prisoner's qualification for an imminent danger exception to the Prison Litigation Reform Act's (PLRA) three-strikes rule was determined at the time of filing of the complaint and that under the imminent danger exception the prisoner could file an entire complaint IFP. The prisoner alleged that he was at risk of contracting HIV and that he had already contracted hepatitis C, because of his exposure to other prisoners who had those contagious diseases due to prison officials' policy of not screening prisoners for such diseases. (California State Prison, Solano)

U.S. District Court
LAW LIBRARY
LEGAL MAIL
TRANSFER
PLRA- Prison Litigation Reform Act

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 provision of Prison Litigation Reform Act (PLRA) requiring exhaustion of administrative remedies before bringing a civil action against prison officials regarding prison conditions applied to the detainee who brought a § 1983 action before he was released from jail, even though the detainee had been released from jail by the time that the defendants brought their motion to dismiss. The court held that the detainee did not state a claim under § 1983 that inadequacies in the jail's law library violated his First Amendment right of access to the courts, even if he alleged that such inadequacies caused the filing of his appeals to be untimely, in the absence of an allegation that such untimeliness had an actual adverse impact on the appeals. The court held that the detainee's allegations that his legal mail was opened by officials at the jail outside of his presence on numerous occasions during a four-month period, and that such actions were intentional and pursuant to a policy or systemic practice, stated a claim under § 1983 for violation of First Amendment free speech rights. (Central Detention Facility. D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

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

Baylis v. *Taylor,* 475 F.Supp.2d 484 (D.Del. 2007). An inmate brought a § 1983 action against various defendants, alleging deliberate indifference to his serious medical needs. The defendants moved for dismissal. The district court granted the motion in part and denied in part. The court held that the inmate's administrative remedies with respect to his claim that prison personnel were deliberately indifferent to his serious medical needs were presumed to have been exhausted, for the purposes of the Prison Litigation Reform Act's requirement that administrative remedies be exhausted before a § 1983 action could be brought, since no further remedies were available to the inmate. (Delaware Correctional Center)

U.S. District Court
PLRA- Prison Litigation Reform Act
IN FORMA PAUPERIS

Brown v. *Beard,* 492 F.Supp.2d 474 (E.D.Pa. 2007). A prisoner brought a civil rights suit alleging that medical personal were intentionally not providing adequate medical care to combat his risk factors for heart disease. Prison officials moved to vacate an order allowing the prisoner to proceed in forma pauperis (IFP). The district court granted the motion. The court held that the prisoner was not in imminent danger of serious physical injury, as required to proceed IFP under the Prison Litigation Reform Act after having three or more prior IFP actions dismissed as frivolous. The court noted that the prisoner did not dispute that he was receiving medical attention for high blood pressure, low blood sugar, and high cholesterol, but merely disputed the findings and quality of treatment he was receiving. (SCI Graterford, Pennsylvania)

U.S. District Court
EXPERT WITNESS

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
EXHAUSTION
PLRA- Prison Litigation Reform Act

Cameron v. *Allen*, 525 F.Supp.2d 1302 (M.D.Ala. 2007). A state inmate filed a § 1983 action against the commissioner of a state department of corrections, a contract medical care provider, and a prison physician challenging the constitutionality of medical treatment provided to him. The defendants moved for summary judgment. The district court granted the motion. The court held that the commissioner was not subject to liability under § 1983 for the prison medical staff's alleged deliberate indifference to the inmate's serious medical needs, where the commissioner did not personally participate in, or have any direct involvement with, the inmate's medical treatment, that medical personnel made all decisions relative to the course of treatment provided to the inmate, and such treatment did not result from a policy instituted by the commissioner.

The court found that the inmate's failure to properly exhaust the prison's grievance procedure barred his § 1983 action. According to the court, even though the inmate filed grievance forms addressing his medical treatment, the treatment that was the subject of the forms was wholly unrelated to the medical treatment about which he complained in his § 1983 action. (Bullock County Correctional Facility, Alabama)

U.S. Appeals Court
FILING FEES
LAW BOOKS
COMPUTERS
PLRA- Prison Litigation Reform Act

Campbell v. *Clarke*, 481 F.3d 967 (7th Cir. 2007). A prisoner sought leave to proceed in forma pauperis in an action against prison officials, alleging deprivation of access to legal materials. The district court dismissed the case and the prisoner appealed. The court of appeals affirmed, finding that the prisoner was barred from proceeding in forma pauperis under the Prison Litigation Reform Act (PLRA), until all the fees for all of the prisoner's past and pending litigation have been paid in full. The prisoner alleged that the jail violates the Constitution because it provides computer-assisted legal research rather than a library of physical law books. The court noted that the prisoner had legal counsel in all criminal cases pending against him and that access to legal materials is required only for unrepresented litigants. (Milwaukee County Jail, Wisconsin)

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

Carbe v. *Lappin*, 492 F.3d 325 (5th Cir. 2007). A federal prisoner filed a *Bivens* action against federal prison officials, alleging that he was subjected to unconstitutional conditions of confinement when officials ignored a mandatory evacuation order for a hurricane and abandoned him and other prisoners without adequate food, water, and ventilation. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded. The court held that the dismissal for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) was not proper, as the lack of exhaustion was an affirmative defense, the complaint was silent as to exhaustion, and the defendants had not yet filed a responsive pleading. (Federal Correctional Complex, Beaumont, Texas)

U.S. District Court
EX-OFFENDER
PLRA- Prison Litigation Reform Act

Crawford v. *Doe,* 484 F.Supp.2d 446 (E.D.Va.2007). A federal inmate brought a *Bivens* action against corrections officials. The inmate moved to proceed in forma pauperis. The district court denied the motion, finding that the inmate was subject to the "three strike" provision of the Prison Litigation Reform Act (PLRA), even though he had been released. The former prisoner claimed that he asked a correctional officer to copy a document that he intended to file in the United States Supreme Court. The officer allegedly asked an inmate, who worked for a Unit Manager, to copy the document and it was shredded. The former prisoner sought $15,000,000. (West Virginia)

U.S. District Court
RETALIATION FOR LEGAL ACTION

Daker v. *Ferrero*, 506 F.Supp.2d 1295 (N.D.Ga. 2007). A former prison inmate brought a § 1983 action against corrections officials, challenging alleged denials of publications and mail, as well as alleged retaliatory acts by officials. The district court granted summary judgment as to certain claims and the officials moved for reconsideration as to a portion of that order and for summary judgment, and the inmate moved for summary judgment. The district court held that reconsideration of summary judgment was warranted by genuine issues of fact that existed as to whether prison officials violated the inmate's First Amendment rights by retaliating against him after he brought numerous grievances and a civil rights action. The court found that the officials were entitled to qualified immunity as to books containing sexually explicit materials, instructions on fighting techniques and military procedures and materials, criminal investigatory techniques, and instructions on building electronic devices, but issues of fact existed as to whether prison officials denied a book about revolution and four legal books based on their content. (Georgia Department of Corrections)

U.S. District Court
EXPERT WITNESS

Estate of Hill v. *Richards*, 525 F.Supp.2d 1076 (W.D.Wis. 2007. The estate of a county jail inmate who committed suicide sued the social worker who interviewed the inmate shortly before her suicide, claiming deliberate indifference to the inmate's suicidal mental condition, in violation of the Eighth Amendment. The social worker moved for summary judgment. The court held that summary judgment was precluded by fact issues as to whether the worker was aware of a suicide risk, as the result of a statement by the inmate that she had poked herself with a thumbtack, and as to the adequacy of the worker's response to the inmate's statement. The court noted that expert testimony was not required to establish that the social worker violated the Eighth Amendment by being deliberately indifferent to the health and safety of the jail inmate; under those circumstances a jury of laypersons could conclude that there was a duty to protect the inmate. The social worker knew, from her experiences with the inmate, that the inmate had a history of depression, that she had been prescribed multiple medications for depression and that she previously had expressed a desire to die. The social worker also knew that the inmate had not been taking her medication for several weeks and that she was being housed in segregation at the jail, where neither other prisoners nor staff could easily monitor her. (Dane County Jail, Wisconsin)

U.S. District Court
IN FORMA PAUPERIS

Estrada v. *Reed*, 508 F.Supp.2d 699 (W.D.Wis. 2007). An allegedly indigent federal prisoner brought a proposed *Bivens* action against a warden, prison doctor, two prison health services administrators, and a captain on the prison's medical staff, alleging deliberate indifference to his serious medical needs. The district court granted the prisoner's motion to proceed in forma pauperis, in part, finding that the prisoner alleged potentially serious medical needs and allowed an inference of deliberate indifference on the part of several of the defendants. The prisoner alleged that prison medical staff failed to monitor his blood pressure consistently after doctors recommended such monitoring, and that a serious stroke left him with limited ability to use much of his left side and with difficulty speaking, so that he required consistent therapy to regain his motor skills. (Federal Correctional Institution, Oxford, Wisconsin)

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

Fields v. *Oklahoma State Penitentiary*, 511 F.3d 1109 (10th Cir. 2007). A state prisoner brought a pro se civil rights action under § 1983 against the Oklahoma State Penitentiary (OSP) and nine OSP employees, alleging claims for violations of various constitutional rights and other federal-law and state-law claims. The district court dismissed all the federal-law claims for failure to exhaust administrative remedies and then exercised its discretion to dismiss the state-law claims. The prisoner appealed. The appeals court affirmed. The appeals court held that the prisoner failed to exhaust his administrative remedies as required under the Prison Litigation Reform Act (PLRA) before bringing suit and that the district court was within its discretion in denying the prisoner's motions to amend his complaint. The court noted that although the prisoner filed grievances with the Oklahoma Department of Correction (ODOC) he failed to comply with the required grievance procedures. (Oklahoma State Penitentiary)

U.S. Appeals Court
LAW LIBRARY
LEGAL ASSISTANCE

Finch v. *Miller*, 491 F.3d 424 (8th Cir. 2007). A prisoner convicted in state court of first-degree murder and sentenced to life in prison filed a second petition for habeas relief, which the district court dismissed. The prisoner appealed and the appeals court affirmed. The court held that the prisoner failed to establish that his lack of access to a state prison law library or legal assistance presented a sufficient impediment to toll the statutory period for filing a habeas petition. (Iowa)

U.S. District Court
LEGAL MAIL

Fontroy v. *Beard*, 485 F.Supp.2d 592 (E.D.Pa. 2007). Inmates sued state prison officials, claiming that a policy of opening legal and court mail outside their presence violated the First Amendment. The district court granted summary judgment for the inmates, in part. The court held that the policy of opening inmate legal and court mail outside of their presence, inspecting for contraband, and resealing the mail without reading it, violated the First Amendment right of inmates to have mail opened in their presence. The court noted that the policy did not further the prison's objective of blocking contraband entering prison through the mails, over an alternate procedure of opening mail in inmate's presence. (SCI-Graterford, Pennsylvania)

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

Franklin v. *Pocono Ranch Lands Property Owners Ass'n*, 484 F.Supp.2d 286 (D.Del. 2007). A prisoner brought an in forma pauperis civil action against a property owners' association and other defendants. The district court dismissed the action, finding that the amended complaint failed to provide sufficient notification of the nature and factual basis of the claimed wrong and therefore should be dismissed under the Prison Litigation Reform Act (PLRA). (Delaware)

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

Freeman v. *Watkins,* 479 F.3d 1257 (10th Cir. 2007). A state prisoner brought a pro se civil rights complaint attacking various prison conditions as well as the process afforded him in disciplinary proceedings. The district court dismissed the suit for failure to totally exhaust administrative remedies, and the prisoner appealed. The court of appeals vacated and remanded. The court held that under an intervening precedent, the prisoner was not required to plead exhaustion of administrative remedies. According to the court, failure to exhaust was an affirmative defense, and the prisoner did not have a duty under the Prison Litigation Reform Act (PLRA) to plead or to demonstrate exhaustion of administrative remedies on his civil rights claims, and thus the district court could not require an affirmative showing of exhaustion upon its preliminary screening of the case. (Fremont Correctional Facility and Colorado State Penitentiary)

U.S. District Court
LAW LIBRARY
LEGAL MATERIAL
PHOTOCOPYING
INDIGENT INMATES

Harrison v. *Moketa/Motycka*, 485 F.Supp.2d 652 (D.S.C. 2007). A pretrial detainee sued various prison officials and medical care providers under § 1983, claiming violations of a variety of his constitutional rights. The district court granted summary judgment for the defendants. The court held that the detainee did not suffer a violation of his Fourteenth Amendment rights when he was allegedly served cold food and two nutritionally deficient breakfasts. According to the court, merely serving food cold did not present a serious risk of harm or an immediate danger to the health of the detainee, and while he had significant pre-existing health problems, there was no indication that those conditions were caused or exacerbated by the diet provided. The court held that the detainee's right of access to the courts was not violated by any restriction on his access to a law library, despite his

claim that his "wrongful" conviction was proof of his actual injury. He did not identify a specific defense or legal claim that he was unable to pursue due to his alleged lack of access to legal materials, and any finding that he had been injured by a "wrongful" conviction would have impermissibly implied the invalidity of his conviction. The court noted that lack of free photocopying of law library materials did not deny the indigent detainee access to the courts. (Alvin S. Glenn Detention Center, South Carolina)

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

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. (California State Prison, Los Angeles County)

U.S. Appeals Court
PLRA- Prison Litigation Reform Act
IN PORMA PAUPERIS

Jackson v. *Johnson,* 475 F.3d 261 (5th Cir. 2007). An individual who had been released from prison on mandatory supervision and who resided in a privately operated halfway house, apparently as a condition of his mandatory supervision, brought an action under § 1983 and § 1985, asserting that his access to the courts had been diminished in violation of the First and Fourteenth Amendments. The district court dismissed his suit, denied his motion for reconsideration, and, following his appeal, denied his request for leave to proceed in forma pauperis (IFP) on appeal. The court of appeals held that the individual was a "prisoner" within the meaning of the Prison Litigation Reform Act's (PLRA) three strikes provision and, thus, could not proceed IFP on appeal. The appeals court denied the motion to proceed in forma pauperis and dismissed the appeal. The court noted that, to the extent that the halfway house resident argued that the state could not detain him in the halfway house because his residence there was voluntary and not a condition of his release, the proper vehicle for his challenge was a habeas petition rather than a § 1983 action. According to the court, PLRA's three-strikes provision does not bar prisoners from proceeding in forma pauperis (IFP) in a habeas action, even if the prisoner has accumulated three strikes. According to the court, although the supervisee had been released from confinement in prison, his release was not to the general public, but was to a facility where he was locked up 16 to 24 hours a day and from which he could leave only for very limited purposes. The court noted that even if the supervisee's time at the halfway house was for primarily non-punitive purposes, that is, to reintegrate him into society, his confinement resulted from his criminal violation, as he remained under the supervision of the Pardons and Paroles Division. (Pardons and Paroles Division of the Texas Department of Criminal Justice, Fort Worth, Texas)

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

Jones v. *Bock*, 127 S.Ct. (2007). State prison inmates brought separate § 1983 actions against corrections officials. The district courts dismissed the actions for failure to satisfy procedural rules, implementing the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA). The appeals courts affirmed the respective dismissals. Certiorari was granted, and the actions were consolidated. The U.S. Supreme Court reversed and remanded. The court held that an inmate's failure to exhaust under PLRA is an affirmative defense-- an inmate is not required to specially plead or demonstrate exhaustion in his complaint. According the court, the inmates' § 1983 actions were not automatically rendered noncompliant with PLRA exhaustion requirement by the fact that not all defendants named in the complaints had been named in previous administrative grievances. The court found that an inmate's compliance with the PLRA exhaustion requirement as to some, but not all, claims does not warrant dismissal of an entire action. (Michigan Department of Corrections)

U.S. District Court
TRIAL

Jordan v. *Pugh*, 484 F.Supp.2d 1185 (D.Colo. 2007). A federal prisoner brought an action against prison officials challenging the constitutionality of a federal Bureau of Prisons (BOP) regulation prohibiting prisoners from acting as a reporter or publishing under a byline. The prisoner petitioned for permission to attend his trial in person and moved for reconsideration of a court order granting the defendants' motion to preclude the testimony of two witnesses who were also prisoners. The district court held that circumstances did not warrant granting the petition in light of the security risks associated with transferring the prisoner to lower security facility to facilitate participation in the trial. The court found that the proffered testimony of the other prisoners was not relevant. (United States Penitentiary, Florence, Colorado)

U.S. District Court
IN FORMA PAUPERIS
LAW LIBRARY
RETALIATION

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

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. 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
APPOINTED ATTORNEY
LEGAL MATERIAL
LEGAL ASSISTANCE

Koerschner v. *Warden*, 508 F.Supp.2d 849 (D.Nev. 2007). A state prisoner brought a motion for appointment of counsel for a federal habeas proceeding. The district court granted the motion. The court held that appointment of counsel was warranted in light of the serious, and potentially constitutionally suspect, limitations placed by the state prison on the due process right of access to courts by segregation-unit inmates. The court noted that access to court for inmates in segregation consisted of a new "paging system," under which inmates can request a maximum of five specified legal materials at a time, and the assistance of essentially untrained inmate legal assistants. (Lovelock Correctional Center, Nevada)

U.S. District Court
OTHER STATE

Lee v. *Corrections Corp. of America*, 525 F.Supp.2d 1238 (D.Hawai'i 2007). A Hawai'i prisoner, who was incarcerated in a Mississippi prison pursuant to a contract between Hawai'i and the private corporation that operated the prison, brought a § 1983 action against the corporation, the Hawai'i Department of Public Safety, and prison officials, arising from an incident in which the prisoner was allegedly beaten by other inmates. The defendants moved to transfer venue. The district court granted the motion, changing the venue to Mississippi. According to the court, the proper venue was Mississippi because the alleged beating, as well as the allegedly negligent monitoring, supervision, training, and hiring by the corporation and prison officials, all occurred in Mississippi. The court noted that convenience factors also supported the transfer of the action to Mississippi because all of the parties except for the Hawai'i Department of Public Safety were on the mainland, the majority of witnesses resided in Mississippi or on the mainland, and there was a local interest in having the controversy decided in Mississippi. The plaintiff alleged that he had been attacked by inmates confined with him in the Special Housing Incentive Program ("SHIP") unit when the cell doors in the segregation unit were inadvertently unlocked, which allowed the inmates to exit their cells. (Tallahatchie County Correctional Facility, Tutwiler, Mississippi. Operated by Corrections Corporation of America)

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

Macias v. *Zenk*, 495 F.3d 37 (2nd Cir. 2007). A federal prisoner brought a pro se suit against prison officials, alleging *Bivens* claims for indifference to his serious medical needs and tort claims under the Federal Tort Claims Act (FTCA). The district court dismissed the *Bivens* claims for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) and dismissed the tort claims without prejudice. The prisoner appealed. The appeals court affirmed in part and vacated in part. The court held that the unavailability of monetary damages in the prison grievance system did not excuse noncompliance with PLRA, and that the prisoner did not procedurally exhaust his remedies by bringing administrative tort claims and making informal complaints. But the court found that the alleged threats directed at the prisoner may have rendered administrative procedures unavailable, preventing the officials from raising non-exhaustion as defense. (Metropolitan Detention Center, Federal Bureau of Prisons, New York City)

U.S. Appeals Court
IN FORMA PAUPERIS

Maness v. *District Court of Logan County-Northern Div.*, 495 F.3d 943 (8th Cir. 2007). After a state court clerk refused his repeated requests to present his application to proceed in forma pauperis (IFP), the federal district court dismissed a prisoner's § 1983 action arising from his state court conviction. The appeals court affirmed, finding that the judge and prosecutor enjoyed absolute immunity, and the district court clerk's ministerial decision to not present the prisoner's IFP application to the Arkansas state court did not violate the prisoner's right of access to the court. The appeals court noted that the clerk who allegedly refused to present the criminal prisoner's IFP application to a circuit judge was not shielded by absolute quasi-judicial immunity in the prisoner's subsequent civil rights action. (Logan County District Court, Arkansas)

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

Maraglia v. *Maloney*, 499 F.Supp.2d 93 (D.Mass. 2007). A state prisoner brought a civil rights suit against several Massachusetts Department of Correction (DOC) prison security officers. The state moved to dismiss the claims for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), and the motion was converted into one for summary judgment. At a prior hearing, the court determined that the question of whether the prisoner exhausted remedies involved disputed issues of fact. The district court held that the issue of fact as to whether the prisoner exhausted remedies presented a question for the jury, not the court, to resolve. The court noted that evidence of the prisoner's failure to file another grievance, challenging the fact that he had not received responses to other allegedly filed grievances went to the issue of the prisoner's credibility regarding exhaustion. (Massachusetts)

U.S. District Court
FRIVOLOUS SUITS

Miles v. *Angelone*, 483 F.Supp.2d 491 (E.D.Va. 2007). After his petition for a writ of habeas corpus was denied, a petitioner filed numerous unsuccessful motions for reconsideration. The district court reclassified the petitioner's twelfth such motion as a new and successive habeas petition and entered A separate order advising the petitioner that he should not file any additional motions for reconsideration or seek any additional review absent a remand or allowance of a successive petition by the court of appeals. The court of appeals dismissed the petitioner's appeal and, in a separate order, affirmed the order advising the petitioner not to file additional motions. The petitioner then filed his seventeenth motion seeking reconsideration, which the court of appeals denied. The court held that the petitioner's history of filing frivolous and harassing pleadings supported a limited pre-filing injunction against the petitioner, noting that the successive and frivolous motions for reconsideration of dismissal of his original habeas petition were a substantial burden on judicial resources. (Virginia)

U.S. District Court
LEGAL MAIL

Moore v. *Schuetzle*, 486 F.Supp.2d 969 (D.N.D. 2007). A state prison inmate brought a § 1983 action against officials, claiming cruel and unusual punishment and violation of his right of access to courts. The district court granted summary judgment in favor of the defendants. The court held that the Eighth Amendment rights of the inmate, who had been placed in administrative segregation, were not violated when he was limited to five hours of outside exercise per week. The court found that the inmate's right of access to courts, and right to counsel, were not violated when prison officials inadvertently opened letters to the inmate from a state court judge and the Department of Justice, on two occasions. (North Dakota State Penitentiary)

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

Murray v. *Prison Health Services*, 513 F.Supp.2d 9 (S.D.N.Y. 2007). A pro se prisoner brought a § 1983 action against prison health services, among others, alleging that a superintendent, nurse administrator and two nurses at the prison were deliberately indifferent to his medical needs and denied him daily medication for his HIV infection. The defendants moved to dismiss the complaint and the district court granted the motion. The court held that the prisoner's alleged actions, sending letters to the nurse administrator and superintendent, were not sufficient to satisfy the exhaustion requirement of the Prison Litigation Reform Act (PLRA). (Green Haven Correctional Facility, N.Y.)

U.S. Appeals Court
BINDING
42 U.S.C.A. Sec. 1983

Phillips v. *Hust,* 477 F.3d 1070 (9th Cir. 2007). A state prisoner brought a pro se § 1983 action against a prison librarian in her personal and official capacities, alleging violation of his right to free speech and right of access to court under the First Amendment. The district court granted summary judgment in favor of the prisoner, and subsequently awarded compensatory damages of $1,500. The librarian appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the librarian's refusal to allow the prisoner to comb-bind his petition for a writ of certiorari to the United States Supreme Court violated the state prisoner's First Amendment right of access to the courts, where the prisoner raised a nonfrivolous claim in his certiorari petition, a state court applied an incorrect legal standard in determining the prisoner's ineffective assistance to counsel claim in his postconviction petition, and the denial of the use of comb-binding machine frustrated his attempt to press his claim in the Supreme Court. The court noted that even if Supreme Court rules did not require comb-binding, it was the binding method the prison routinely made available to the prisoner and others, it was foreseeable that the librarian's refusal would obstruct the prisoner's ability to file a petition in a timely manner, and the prisoner had no independent tort cause of action against the librarian for violation of his rights. The court found that the librarian was not entitled to qualified immunity for her conduct in refusing to allow the prisoner to use a comb-binding machine, where her conduct violated the prisoner's clearly established right to prepare, serve, and file court documents in a timely manner, and not to be subjected to arbitrary enforcement of prison rules. The prisoner's petition missed the Supreme Court filing deadline and was denied as untimely. The appeals court held that the librarian's refusal was blatantly contrary to past practice and state prison regulations, and under existing precedent, the librarian should have known that refusal of the prisoner's request could result in missing the filing deadline. According to the court, the damages award could be based on costs that the prisoner expended in prosecuting his postconviction relief petition over the course of many years and any mental or emotional injury the prisoner suffered, but the district court was required to make specific findings concerning the amount of the costs expended as well as specific findings concerning mental or emotional injury. The court concluded that where the district court's findings are insufficient to indicate the factual basis for its ultimate conclusion concerning damages in a § 1983 claim, its finding as to the amount of damages is clearly erroneous. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
BINDING

Phillips v. *Hust*, 507 F.3d 1171 (9th Cir. 2007). A state prisoner brought a pro se § 1983 action against a prison librarian in her personal and official capacities, alleging violations of his right to free speech and right to access courts under the First Amendment. The district court granted summary judgment in favor of prisoner, and subsequently awarded compensatory damages of $1,500. The librarian appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the librarian's refusal to allow the prisoner to comb-bind his petition for a writ of certiorari to the United States Supreme Court violated the prisoner's First Amendment right of access to the courts, the librarian was not entitled to qualified immunity, and the district court was required to make specific findings to support the damages award. The appeals court denied the librarian's petition for rehearing. In a dissent, Circuit Judge Kozinski expressed his "utter astonishment that we're leaving an opinion on the books that not only denies the prison librarian qualified immunity but actually holds her liable. Her transgression? Failing to help a prisoner bind a brief in a way that's not even permitted, and certainly not required, by the Supreme Court's rules….How the prison librarian violated any of his rights, let alone his clearly established rights, is a mystery that repeated readings of the majority opinion do not dispel." (Snake River Correctional Institution, Oregon)

U.S. District Court
LAW LIBRARY

Platt v. *Brockenborough*, 476 F.Supp.2d 467 (E.D.Pa. 2007). A prisoner brought a § 1983 action against prison officials, alleging that he was repeatedly placed in punitive segregation, was not permitted to exercise regularly, and was denied an opportunity to appeal disciplinary decisions. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prison's failure to respond to the prisoner's numerous grievances regarding his conditions of confinement did not infringe on the prisoner's due process right of access to the courts, since the prisoner could file suit in federal court. The court found that the prisoner failed to state a due process claim based on denial of access to a prison law library, where the prisoner failed to explain even in minimal detail what injury he suffered as a result of the alleged denial of access. The court noted that access to the prison law library is not a freestanding right, and a prisoner challenging the denial of access must allege some actual injury to have standing to assert a claim on this basis. (Philadelphia Industrial Correctional Center)

U.S. Appeals Court
IN FORMA PAUPERIS
PLRA- Prison Litigation Reform Act

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
INDIGENT INMATES
DUE PROCESS

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
APPOINTED ATTORNEY

Price v. *Correctional Medical Services*, 493 F.Supp.2d 740 (D.Del. 2007). An inmate brought a § 1983 action against a prison's medical services provider and prison officials, alleging deliberate indifference to his serious medical needs. The provider moved to dismiss, and the inmate moved for appointment of counsel. The district court denied the motions. The court held that the prisoner stated a claim under § 1983 against the prison's medical services provider for deliberate indifference to a serious medical need, in violation of the Eighth Amendment. The prisoner alleged that the refusal of prompt medical care to his recently surgically repaired wrists, upon his transfer from another facility, by employees of the prison's medical services provider, was, or could have been, partially responsible for the permanent damage to his wrists that was independently verified by an outside doctor. The court noted that the seriousness of the prisoner's medical need was so obvious, from the condition he arrived in, his description of the events to nurses, and from the obvious pain he was under for a period of weeks, that any lay person would have recognized the need for a doctor. The court declined to appoint counsel for inmate, noting that the prisoner had been capably representing himself, and there were no special circumstances requiring the appointment of counsel. (Delaware Correctional Center)

U.S. Appeals Court
VIDEO COMMUNICA-TION
ADA- Americans With Disabilities Act

Robertson v. *Las Animas County Sheriff's Dept.*, 500 F.3d 1185 (10th Cir. 2007). A deaf pretrial detainee brought suit under § 1983 and the Americans with Disabilities Act (ADA) against deputies and a sheriff, claiming wrongful arrest and failure to accommodate his disability. The district court dismissed all claims against the defendants on their motion for summary judgment and the detainee appealed. The appeals court reversed and remanded. The court held that a fact issue as to whether the totally deaf detainee with a surgically implanted cochlear implant was substantially limited in his ability to hear, precluded summary judgment as to whether he was a qualified individual under ADA. The court also found that summary judgment was precluded by fact issues as to whether the jail knew, or should have been aware of, the deaf inmate's limitations. The court found that the detainee was qualified to receive benefits and services of the county jail, within the meaning of ADA, with respect to phone services and televised closed-circuit viewing of his probable cause hearing, as such services were available to all inmates. (Las Animas County Jail, Colorado)

U.S. District Court
PLRA- Prison Litigation Reform Act
FILING FEES
INDIGENT INMATES
IN FORMA PAUPERIS

Samonte v. *Frank*, 517 F.Supp.2d 1238 (D.Hawai'i 2007). A prisoner, who had filed several civil rights actions, moved to have funds withdrawn from his prison trust account sequentially, rather than simultaneously, to satisfy court orders granting him in forma pauperis (IFP) status and directing collection and payment of filing fees. The district court denied the motion. The court held that indigent prisoners are required to pay filing fees on a per case basis, rather than per prisoner basis, and that per case payments did not burden the prisoner's constitutional right of meaningful access to the courts. The court noted that the Prison Litigation Reform Act (PLRA) filing fee provision requiring indigent prisoners to make monthly payments of 20 percent of the preceding month's income should be applied by simultaneously collecting fees for all of a prisoner's outstanding cases, as long as a minimum of $10 remains in the prisoner's account. (Hawai'i)

U.S. District Court
EXPERT WITNESS

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 that the detainee was sick because he was throwing up in his cell and in a day room. (Cook County, Illinois)

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

Torres Rios v. *Pereira Castillo*, 545 F.Supp.2d 204 (D.Puerto Rico 2007). The mother of a prisoner who died from injuries he received from another inmate while under custody at a Puerto Rico facility filed a civil rights action against prison officials. The officials moved to dismiss for failure to exhaust administrative remedies. The district court denied the motion, finding that neither the mother nor the estate of the prisoner were subject to the Prison Litigation Reform Act's (PLRA) exhaustion requirement. (Puerto Rico)

U.S. District Court
LEGAL MAIL

Vasquez v. *Raemisch*, 480 F.Supp.2d 1120 (W.D.Wis. 2007). A prisoner sought leave to proceed under the in forma pauperis statute in a proposed civil rights action for declaratory, injunctive and monetary relief brought against prison officials and corrections officers. The court held that the prisoner failed by state a First Amendment claim by alleging that his legal mail was opened by prison officials three times outside his presence, and that his legal mail was given to another prisoner with the same last name on one occasion, where the prisoner did not suggest that any of the four instances he described prevented him from litigating a case, and none of the mail at issue involved correspondence from his criminal defense lawyer. (Wisconsin)

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

Wesolowski v. *Sullivan*, 524 F.Supp.2d 251 (W.D.N.Y. 2007). An inmate in the custody of the New York State Department of Correctional Services (DOCS) brought a § 1983 action against DOCS employees alleging his constitutional rights were violated while he was confined at a correctional facility when employees confiscated fundraising materials. The employees moved for summary judgment. The district court granted the motion. The court held that the inmate failed to comply with the Prison Litigation Reform Act's exhaustion requirement by never appealing the denial of a grievance filed with the Inmate Grievance Resolution Committee (IGRC) to Central Office Review Committee (CORC). The court found that the confiscation of materials describing how someone could conduct a political fundraising event to benefit Families Against Mandatory Minimums (FAMM) did not violate the inmate's rights under the First Amendment, considering the possibilities for abuse that would have arisen if inmates were freely allowed to engage in fundraising from fellow inmates. According to the court, the restriction and regulation of such activities by prisoners was unquestionably a legitimate penological interest, and it was uncontroverted that the inmate did not follow established procedures for obtaining authorization to engage in such activities. The court noted that even assuming the employees' actions in confiscating the materials violated the inmate's First Amendment rights, the employees were entitled to qualified immunity, as no authority had clearly established the inmate's First Amendment right to possess the materials in question at the time of events giving rise to lawsuit. (New York State Department of Correctional Services)

U.S. Appeals Court
LEGAL ASSISTANCE
LEGAL RESEARCH

White v. *Kautzky*, 494 F.3d 677 (8th Cir. 2007). A pro se state prisoner sued the Director of the Iowa Department of Corrections and warden of the prison where he was incarcerated under § 1983, claiming that the policy of not allowing contract attorneys to do legal research for inmates in appropriate cases violated his right to have access to the courts. The district court entered judgment for the prisoner and awarded nominal damages. The defendants appealed. The appeals court reversed and vacated, finding that the prisoner was not actually injured by the policy, as required to establish a violation of his right to access to the courts. (Anamosa State Penitentiary, Iowa)

U.S. Appeals Court
EXHAUSTION

Whitington v. *Ortiz,* 472 F.3d 804 (10th Cir. 2007). A state prisoner brought a § 1983 action alleging his rights were violated by the denial of access to free hygiene items. The district court dismissed the action and the prisoner appealed. The appeals court held that the prison's failure to timely respond to the prisoner's Step Three grievance regarding access to hygiene products established that the prisoner exhausted his available administrative remedies, as required by PLRA. A Step 3 grievance requires the prison to respond within 45 days. 196 days after he filed his Step 3 grievance he still had not received a response and then filed suit. The court held that the prisoner's elaboration on the way the prison's policies caused him to suffer dental problems satisfied his obligation to state an injury to support his Eighth Amendment claim but did not equate to a delay in dental treatment claim. The prisoner contended that he was unable to pay for hygiene items out of his prison income after the prison debits his prison account to pay for restitution, medical care, legal photocopies, and legal postage. (Colorado Department of Corrections)

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

Williams v. *Beard*, 482 F.3d 637 (3rd Cir. 2007). A state prisoner brought a § 1983 action against a prison's unit manager, alleging he violated the Eighth Amendment by failing to protect him from an attack by another prisoner. The district court granted summary judgment for the defendant and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's procedural default should have been excused. The court held that, although the prisoner procedurally defaulted his claim when he did not name the unit manager in his initial grievance that asked to be moved from his cell because he feared he would be hurt by his cellmate, the default should have been excused in his § 1983 action, because the unit manager responded to the grievance and acknowledged conversations the prisoner had with staff regarding his transfer request, but rejected the grievance as lacking merit. (Pennsylvania State Correctional Institution at Huntingdon)

2008

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

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. Appeals Court
LEGAL MAIL

Al-Amin v. *Smith*, 511 F.3d 1317 (11th Cir. 2008). A state prison inmate brought a § 1983 action against state corrections officials, alleging that the officials repeatedly opened his privileged attorney mail outside of his presence in violation of his rights to access to the courts and free speech. The district court denied the officials' motion for summary judgment and the officials appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner's constitutional right of access to the courts requires that incoming legal mail may be opened only in the inmate's presence and only to inspect for contraband. According to the court, the inmate's right to have properly marked incoming attorney mail opened only in his presence was clearly established. The court found that the lack of showing of actual injury precluded recovery on the right-of-access claim. The court held that the inmate had a free speech right to communicate with his attorneys separate from his right of access to the courts and that the pattern and practice of opening the prisoner's attorney mail outside his presence impinges on his freedom of speech. The court noted that actual injury is not required for the prisoner to state a free speech claim arising from the opening of attorney mail and that the First Amendment prohibition against opening the inmate's attorney mail outside his presence was clearly established. (Georgia State Prison)

U.S. District Court
EXPERT WITNESS

Antoine v. *County of Sacramento*, 566 F.Supp.2d 1045 (E.D.Cal. 2008). A pretrial detainee brought a civil rights action against corrections officers based upon the officers' use of a "grating" restraint practice. After a jury verdict in favor of the detainees, the officers moved for a new trial. The district court granted the motion in part and denied in part. The court held that it was proper to permit an expert witness to express his opinions regarding the propriety of the "grating" practice in the context of whether the officers' decision to employ that practice rather than the "prostraint" restraining chair was appropriate. The court found that the compensatory damages instruction given in the detainee's civil rights action was in error since it permitted the jury to believe that it could award an unlimited amount of non-compensatory damages to compensate the plaintiff for the abstract "value" of his constitutional rights. According to the court, the use of the term "constitutional injuries"--combined with the instruction allowing the jury to award nominal damages, and the omission of the $1.00 limit--invited the jury to award an unlimited amount of damages based on the importance of the plaintiff's constitutional rights in lieu of awarding compensatory damages. The jury awarded the detainee $20,000 in compensatory damages as well as $25,000 in punitive damages against each of four defendants, and $50,000 against one defendant. (Sacramento County, California)

U.S. District Court
LEGAL MATERIAL
PHOTOCOPYING
POSTAGE

Atwell v. *Lavan*, 557 F.Supp.2d 532 (M.D.Pa. 2008). A state inmate brought a pro se § 1983 action against prison employees, probation and parole board members and medical personnel, alleging he was denied access to courts in violation of the First Amendment. The district court held that the inmate's allegation that he was denied access to court because he was not provided with free photocopies and postage failed to state a claim under the First Amendment. The court noted that the copying service at the prison was not tantamount to an adequate law library, the inmate did not show he was actually injured in any of his cases with respect to not having adequate copies, and the inmate could have filed handwritten copies of his documents. The court found that the allegation that the inmate was denied access to the courts because he was denied access to stored legal material failed to state a claim under the First Amendment. The court noted that the inmate was allowed access to his stored materials in exchange for a like number of items from his cell, and prison staff did not care which of the inmate's items were in his cell as long as he kept within the allowed limit of items. (State Correctional Institution at Dallas, Pennsylvania)

U.S. Appeals Court
APPOINTED ATTORNEY

Barnes v. *Black*, 544 F.3d 807 (7th Cir. 2008). A state prisoner petitioned for a writ of habeas corpus to order a prison warden to have him transported to the district court where his personal injury suit was pending. The district court denied the petition and denied the prisoner's request for a lawyer. The prisoner appealed. The appeals court dismissed the action. The court held that the district court's order denying the state prisoner's request for a lawyer to represent him in his personal injury lawsuit and in his habeas petition were non-final and therefore the appeals court did not have jurisdiction. (Wisconsin)

U.S. Appeals Court
ATTENDANCE-COURT

Briscoe v. *Klaus*, 538 F.3d 252 (3rd Cir. 2008). A state prison inmate brought a § 1983 Eighth Amendment action against corrections officers and a prison nurse, alleging the use of excessive force and failure to provide needed medical treatment. The district court granted summary judgment for the defendants as to some claims, and subsequently dismissed the remaining claims for failure to prosecute, following the inmate's failure to appear at a final pretrial conference. The inmate appealed. The appeals court vacated and remanded, finding that there was insufficient evidence to support the district court's finding that the inmate had refused to attend the pretrial conference, its finding of prejudice from the inmate's failure to appear, and the finding of willfulness or bad faith. The appeals court ruled that the district court abused its discretion by dismissing the action without affording the inmate the opportunity to be heard. The appeals court criticized the district court for assuming the truth of prison officials' assertion that the prisoner had refused to attend the pretrial conference, without hearing from the prisoner or seeking his explanation. (State Correctional Institution at Camp Hill, State Correctional Institution at Pittsburgh, Pennsylvania)

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

Bryant v. *Rich*, 530 F.3d 1368 (11th Cir. 2008). State inmates brought § 1983 suits against prison officials, claiming that they had been beaten. The district court dismissed the complaints without prejudice. The inmates appealed. The appeals court affirmed. The court held that the district judge properly acted as a fact finder in resolving, on motions to dismiss, a factual dispute as to whether an inmate had exhausted

administrative remedies as required by PLRA. The court found that in dismissing a state inmate's § 1983 suit for failure to exhaust administrative remedies, the district court did not clearly err in finding that the inmate's allegation that he was denied access to grievance forms at a prison was not credible, especially given the unrebutted evidence that he successfully filed a grievance there, although it was one for property loss. According to the court, a state inmate's untimely appeal of a warden's denial of his grievance did not satisfy the PLRA exhaustion requirement for him to pursue a § 1983 claim. The court found that, despite an inmate's contention that he failed to report an incident of prison abuse because he feared additional violent reprisals by prison officials, the inmate failed to exhaust his administrative remedies, as required by PLRA for him to pursue a § 1983 claim. The court noted that the inmate was later transferred to another prison where the threat of violence was removed and he could have filed an out-of-time grievance and then shown good cause for its untimeliness. (Rogers State Prison, Georgia)

U.S. District Court
NOTARY

Carmon v. *Duveal*, 554 F.Supp.2d 281 (D.Conn. 2008). A state inmate brought a § 1983 action against several prison officials, alleging various violations of his constitutional rights. The court held that absent any showing that he was actually injured by a prison counselor's refusal to notarize certain court documents, the inmate was not deprived of his constitutional right of access to the courts. According to the court, although the counselor's refusal to notarize the papers was due to the inmate's failure to submit necessary documentation, the inmate did not thereafter submit such documentation, he did not allege that the request for documentation was improper, and he did not show how the lack of notarization hindered his efforts to pursue his legal claims. The court found that the prolonged period of segregation might implicate a protected liberty interest. (Cheshire Correctional Institution, Connecticut)

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

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. Appeals Court
EXHAUSTION
PLRA- Prison Litigation Reform Act

Cohen v. *Corrections Corp. of America*, 588 F.3d 299 (6th Cir. 2008). A federal prisoner filed a pro se § 1983 action, claiming that a private prison and corrections personnel failed to accommodate the practice of his religion of Judaism by not providing kosher food. The district court dismissed the action for failure to exhaust under the Prison Litigation Reform Act (PLRA). The prisoner petitioned for a writ of certiorari. The United States Supreme Court granted certiorari, vacated the decision, and remanded based on intervening law. On remand, the prisoner filed a supplemental brief. The appeals court reversed and remanded, finding that PLRA did not require exhaustion prior to filing complaint. The court noted that a new decision by the U.S. Supreme Court held that under the Prison Litigation Reform Act, a prisoner is not required to specifically plead or demonstrate exhaustion in his complaint. The Court further held that "exhaustion is not per se inadequate simply because an individual later sued was not named in the grievance." The Supreme Court found that the appeals court imposition of the prerequisite to properly exhaust a claim prior to filing a complaint was "unwarranted." (Corrections Corporation of America, Northeast Ohio Correctional Center.)

U.S. District Court
LEGAL MATERIAL
PHOTOCOPYING
RETALIATION FOR LEGAL ACTION

Collins v. *Goord*, 581 F.Supp.2d 563 (S.D.N.Y. 2008). An inmate brought a pro se § 1983 action against a commissioner of a state corrections department and a correctional facility's superintendent, law library administrator, and law library supervisors, asserting claims for denial of access to the courts, deprivation of property without due process, and retaliation for the exercise of constitutionally protected rights. The court held that summary judgment was precluded by factual issues on the inmate's claim alleging denial of his right of access to the courts. The court found that there was no evidence that the administrator or a second supervisor received or denied the inmate's requests for photocopying, as required to establish a claim against them for denial of the inmate's right of access to the courts. The court found that factual issues existed as to whether denial of the inmate's request for an advance for the purchase of photocopying frustrated his pursuit of a non-frivolous legal claim in his state-court litigation. According to the court, material issues of fact existed as to whether the law library supervisor acted deliberately and maliciously in denying the inmate's requests for an advance for the purchase of photocopying to make copies of an order to show cause that he was to serve in connection with state-court litigation, after the inmate established that the copies were required by the court and that the documents could not be replicated in longhand. The court also found fact issues as to whether a supervisor acted as a decision-maker with respect to the inmate's request for an advance. (Fishkill Correctional Facility, New York)

U.S. District Court
ATTORNEY FEE

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
RESTRAINTS
SEARCHES
TRANSPORTATION

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. 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
LAW LIBRARY

Decker v. *Dunbar*, 633 F.Supp.2d 317 (E.D.Tex. 2008). *Affirmed* 358 Fed.Appx. 509. An inmate filed a pro se § 1983 action against prison officials, asserting Eighth and Fourteenth Amendment violations, among other constitutional claims. The officials moved for summary judgment and the district court granted the motion. The court held that the inmate failed to demonstrate that his alleged lack of access to the prison's law library resulted in dismissal of his multiple previously filed criminal appeals and civil cases, and thus the inmate failed to establish an actual injury, as required to prevail on the claim that he was denied access to court. (Texas Department of Criminal Justice, Correctional Institutions Division)

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

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. District Court
ADA-Americans With Disabilities Act
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. The court held that alleged verbal abuse from correctional officers when the deaf prisoner complained about

the lack of a telephone typewriter (TTY) was too trivial to rise to the level of a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause. (Orleans Parish Prison, Louisiana)

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

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)

U.S. Appeals Court
EXPERT WITNESS

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 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. (East Arkansas Regional Unit of the Arkansas Department of Corrections)

U.S. Appeals Court
EXPERT WITNESS

Ford v. *County of Grand Traverse*, 535 F.3d 483 (6th Cir. 2008). A state inmate brought a § 1983 action against jail officials and the county claiming, among other things, that the county's policy or custom regarding the provision of medical care at the jail on weekends reflected deliberate indifference to her medical needs and caused injuries resulting from a fall from the top bunk in her cell when she had a seizure. After a jury found against the county, the district court denied the county's motions for judgment as a matter of law. The county appealed. The appeals court affirmed, finding that sufficient evidence existed for reasonable minds to find a direct causal link between county's policy of permitting jail officials to "contact" medical staff simply by leaving a medical form in the nurse's inbox, even though a nurse might not see the notice for 48 hours, and the alleged denial of the inmate's right to adequate medical care, allegedly leading to the inmate suffering a seizure and falling from a top bunk. According to the court, the deposition testimony of a doctor provided a basis for finding that the inmate would not have suffered a seizure had she been given medication within a few hours of her arrival at the jail. The inmate, a self-described recovering alcoholic who also suffers from epilepsy, was arrested on a probation violation and taken to the jail. That afternoon, she had a seizure, fell from the top bunk of a bed in her cell, and sustained significant injuries to her right hip and right clavicle. Her case proceeded to trial and the jury found that none of the jail officials were deliberately indifferent to her serious medical needs, but determined that the county's policy regarding weekend medical care exhibited deliberate indifference to, and was the proximate cause of, her injuries. The jury awarded her $214,000 in damages. (Grand Traverse County Jail, Michigan)

U.S. District Court
LEGAL MAIL
LEGAL MATERIAL

Frazier v. *Diguglielmo*, 640 F.Supp.2d 593 (E.D.Pa. 2008). A prisoner brought an action against several prison officers and supervisors, alleging that the defendants violated his rights by interfering with his mail and seizing legal materials from his cell. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the prisoner's bare allegation, that prison officials' seizure of a writ of coram nobis "obstructed" his right to "petition the government for redress of grievances," was insufficient to allege the infringement of an exercise of a First Amendment right of access to the courts to secure judicial relief, as required to state a claim for violation of the right of access. The court noted that the prisoner did not describe the contents of the writ or the judgment he sought to challenge, nor did the prisoner allege or even allude to any prejudice in any legal action caused by the writ's confiscation. The court found that the prisoner's allegation that prison officials seized legal documents relating to his criminal and habeas cases was insufficient to state a claim for violation of First Amendment right of access to the courts, absent an allegation that the alleged seizure caused him prejudice in a legal challenge to his conviction or to his conditions of confinement. (State Correctional Institution at Graterford, Pennsylvania)

U.S. Appeals Court
RECORDS
FOIA- Freedom of Information Act

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. Appeals Court
EXHAUSTION
PLRA- Prison Litigation Reform Act

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. The court found that the prisoner's Eighth Amendment § 1983 claims for

excessive force and equal protection race discrimination could not be dismissed under the Prison Litigation Reform Act (PLRA) at the screening stage for failure to exhaust administrative remedies. According to the court, if a prisoner's complaint contains claims that are administratively exhausted and claims that are not exhausted, the district court should proceed with the exhausted claims while dismissing the claims that are not exhausted and should not dismiss the complaint in its entirety. (Kentucky State Penitentiary)

U.S. Appeals Court
EXPERT WITNESS

Hannah v. *U.S.*, 523 F.3d 597 (5th Cir. 2008). A federal prisoner filed a *pro se* complaint under the Federal Tort Claims Act (FTCA) against the United States and others involved in the medical treatment that he received while suffering from Methicillin-Resistant Staphylococcus Aureas (MRSA), a sinus infection. After the prisoner's untimely motion for appointment of an expert witness was denied, the United States moved for summary judgment. The district court granted the motion and dismissed the lawsuit. The prisoner appealed. The appeals court affirmed. The court held that the district court did not abuse its discretion in failing to appoint an expert witness, and that under Texas law, the prisoner was required to present expert testimony to establish the applicable standard of care with respect to the treatment of MRSA and to show how the care he received breached that standard. According to the court, his failure to designate or hire an expert to testify on his behalf entitled the United States to judgment as a matter of law. (Federal Medical Center, Fort Worth, Texas)

U.S. Appeals Court
JAIL HOUSE LAWYERS
LEGAL MATERIAL
RETALIATION
TRANSFER

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. Appeals Court
LAW LIBRARY
LEGAL ASSISTANCE
RETALIATION

Hartsfield v. *Nichols*, 511 F.3d 826 (8th Cir. 2008). A state prisoner brought a § 1983 action against prison officials alleging denial of access to courts and retaliatory discipline. The district court dismissed his access to courts claim and granted summary judgment in favor of the defendants on the retaliation claim. The prisoner appealed. The appeals court affirmed. The court held that some evidence supported the disciplinary actions taken against the prisoner and thus he failed to establish a § 1983 retaliatory discipline claim. The court noted that a corrections officer filed reports of disciplinary violations against the prisoner for disruptive conduct, verbal abuse, and making threats. An independent hearing officer found the prisoner guilty of the violations. The court found that the prisoner failed to establish an actual injury necessary for an access to courts claim. The prisoner alleged that officials intentionally denied him access to law books in the prison library and adequate legal assistance from a prison attorney. The court noted that the prisoner only roughly and generally alleged that he was prevented from filing. The prisoner alleged that he did not know what arguments to make not that he was actually prevented from filing a complaint or that a filed complaint was dismissed for lack of legal adequacy. The court found the prisoner's claim that any complaint he would have filed would have been insufficient was speculative. (Iowa State Penitentiary)

U.S. Appeals Court
APPOINTED ATTORNEY

Jackson v. *Kotter*, 541 F.3d 688 (7th Cir. 2008). A prisoner brought an action against federal prison employees and the federal government, alleging negligence under the Federal Tort Claims Act (FTCA) and constitutional claims pursuant to Bivens. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that a Physician's Assistant (PA) in the prison did not act with deliberate indifference toward the prisoner in response to an alleged back injury suffered by the prisoner after being escorted out of his cell for a strip search. According to the court, the PA saw the prisoner shortly after his alleged injuries and ordered an x-ray, personally observed the prisoner's condition and took into consideration prior x-rays of his spine, and afforded some of the pain treatment that the prisoner demanded. The court found that the district court's decision not to recruit counsel for the prisoner was reasonable, and thus not an abuse of discretion. The court noted that the case was not overly difficult, the prisoner's submissions were coherent and organized as were his requests for documents and interrogatories, the prisoner was able to testify about his own injuries and he successfully secured medical records that were not overly complex, and the prisoner was able to take direct testimony from several witnesses and conducted cross-examination. (United States Penitentiary, Terre Haute, Indiana)

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

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
EXHAUSTION
PLRA-Prison Litigation Reform Act

Jensen v. *Knowles*, 621 F.Supp.2d 921 (E.D.Cal. 2008). A state prisoner brought a pro se § 1983 action against prison officials, claiming deprivation of his Eighth Amendment rights by allegedly denying the prisoner a medically necessary diabetic diet and forcing him to reside in a cell with a prisoner who smoked, and deprivation of his First Amendment rights by the alleged confiscation of the prisoner's Bible and Christian doctrine books. The district dismissed the action on the grounds that the prisoner was not entitled to in forma pauperis (IFP) status, under the three strikes rule. The appeals court reversed and remanded. On remand, the defendants moved to dismiss, and the prisoner moved to re-serve a correctional officer. The district court granted the defendants' motions in part and denied in part, and granted the plaintiff's motion. The court held that the prisoner's claim that he was deprived of his First Amendment rights due to the confiscation of his Bibles and Christian doctrine books by prison officials was precluded on exhaustion grounds, under the Prison Litigation Reform Act (PLRA), even though the prisoner exhausted his claim, where the prisoner filed suit two days before the prison grievance process itself was exhausted. The court found that the prisoner's claim that his Eighth Amendment rights were violated, due to exposure to second-hand smoke by his forced housing with a prisoner who smoked and due to prison officials' failure to issue a medical order prohibiting his housing with a smoker, satisfied the exhaustion requirements by completing the grievance process, as required by the Prison Litigation Reform Act (PLRA). (Mule Creek State Prison, California)

U.S. District Court
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
PHOTOCOPIES
PLRA- Prison Litigation Reform Act
POSTAGE

Johnson v. *Ozmint*, 567 F.Supp.2d 806 (D.S.C. 2008). A state prison inmate brought a state court § 1983 action against the director of a state's department of corrections, alleging improper debiting of his trust account to pay for legal copies and postage, improper classification, improper conditions of confinement, and denial of rehabilitative opportunities. The director removed the action to federal court. The district court granted summary judgment for the director and remanded. The court held that the inmate's written requests to prison staff, and correspondence addressing issues of prison conditions, did not satisfy the Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement, so as to permit the inmate's § 1983 action involving the same prison conditions to go forward. According to the court, the inmate's filing of grievances, after commencing the § 1983 action, could not satisfy the PLRA administrative exhaustion requirement with respect to claims made in the § 1983 suit. (South Carolina Department of Corrections)

U.S. District Court
PLRA- PRISON LITIGATION REFORM ACT

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. 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
LAW LIBRARY
LEGAL MATERIAL
RIGHT TO COUNSEL

Jones v. *Lexington County Detention Center*, 586 F.Supp.2d 444 (D.S.C. 2008). A pretrial detainee brought a pro se civil rights action against a county detention center and sheriff, alleging his inability to have access to legal research materials violated his constitutional rights. The district court dismissed the case. The court held that the detainee did not have a constitutional right of access to a law library while being temporarily held in a county detention facility awaiting trial on criminal charges, where the detainee did not allege that he had been incarcerated for too long and was not pursuing any speedy trial claims. The court noted that a state is only required to provide criminal defendants legal counsel, not legal research materials. According to the court, the detainee's lack of access to a law library while being temporarily held in a county detention facility was not an "actual injury," as required to confer standing for the detainee to allege a deprivation of a constitutional right of access to the courts. (Lexington County Detention Center, South Carolina)

U.S. Appeals Court
ACCESS TO COURT
DUE PROCESS
STATUTE OF LIMITATIONS

Laurence v. *Wall*, 551 F.3d 92 (1st Cir. 2008). A pro se inmate brought a civil rights action against prison employees. The district court dismissed the complaint for failure to effect timely service of process. The inmate appealed. The appeals court vacated and remanded. The court held that the inmate showed good cause for failure to timely serve the defendants, where the trial court failed to direct the United States Marshal to serve process for the inmate. (Adult Correctional Institution, Rhode Island)

U.S. District Court
TELECONFERENCE

Lunsford v. *RBC Dain Rauscher, Inc*., 590 F.Supp.2d 1153 (D.Minn. 2008). Prisoners brought a pro se suit against a securities clearing house, brokerage firm, and brokerage firm employees, alleging a civil rights conspiracy, due process, contract, and securities law violations in closing of their brokerage accounts. Following arbitration of some prisoners' common law and securities law claims, the prisoners moved to vacate the award. The defendants moved to confirm the award and to dismiss the remaining claims. The district court granted the motion in part and denied in part. The court held that requiring the prisoners to testify telephonically did not merit vacation of the award. The court noted that prisoners were not a protected class and had no fundamental right to maintain securities brokerage accounts with private entities, as required to support claims for a Fifth Amendment due process violation, civil rights conspiracy, and neglect to prevent civil rights conspiracy. (RBC Dain Correspondent Services, Nations Financial Group, Inc., Federal Corr'l Institute, Edgeville, South Carolina)

U.S. District Court
RETALIATION FOR LEGAL ACTION

May v. *Rich*, 531 F.Supp.2d 998 (C.D.Ill. 2008). A state prisoner brought suit against a prison employee, alleging civil rights claims for denial of access to the courts and retaliation for filing grievances and litigation. Following a jury trial, the jury returned a general verdict in favor of the prisoner, awarding $2,388. The prison employee moved for judgment as matter of law or, in the alternative, for a new trial. The district court granted the motion, entering a judgment for the defendant as a matter of law. The court held that the prisoner did not suffer an actual injury, as required for a denial of access claim. The court found that the employee did not retaliate against the prisoner by filing a disciplinary report based on his possession of prison contraband. The court noted that the employee had an absolute duty to file a disciplinary report against the prisoner for possession of carbon paper, which was contraband in the prison system, such that reporting the prisoner could not be deemed retaliation for the prisoner's exercise of First Amendment rights in filing civil rights suits. (Pontiac Correctional Center, Illinois)

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

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. (Texas Department of Criminal Justice, Hughes Unit)

U.S. Appeals Court
DUE PROCESS
STATUTE OF LIMITATIONS

McNair v. *Allen*, 515 F.3d 1168 (11th Cir. 2008). A death row inmate moved for a stay of his execution, on the theory that the method of execution to which he was subject, death by lethal injection, violated his right to be free from cruel and unusual punishment. The district court granted the motion to allow the inmate to litigate his § 1983 claims and the defendants appealed. The appeals court vacated. The court held that the two-year statute of limitations on the § 1983 claim brought by the inmate began to run when the inmate became subject to the new execution protocol, not at the time of the inmate's execution or on the date that a federal habeas review was completed. (Holman Correctional Facility, Alabama)

U.S. Appeals Court
FILING FEES
FRIVOLOUS SUITS
IN FORMA PAUPERIS
PLRA- Prison Litigation Reform Act

Miller v. *Donald*, 541 F.3d 1091 (11th Cir. 2008). A paraplegic state inmate, a frequent litigant as a plaintiff in the federal courts in Georgia, brought a pro se § 1983 action against the Commissioner of the Department of Correction and various Department officials, asserting violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and seeking leave to proceed in forma pauperis (IFP). The district court dismissed the complaint without prejudice as frivolous and enjoined the inmate from submitting further filings with the court, except in limited circumstances, without first paying the unpaid filing fees that he had accrued. The inmate appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that the injunction against the inmate, which, with three narrow exceptions, prohibited him from filing any new papers with the court under the "three strikes" provision of the Prison Litigation Reform Act (PLRA) until he paid all accrued filing fees, was overbroad and exceeded the bounds of judicial discretion. The three exceptions allowed the inmate to file new papers in response to criminal cases brought against him, to request reconsideration, and to plead that he had been denied access to state court. The court noted that the inmate had filed several suits alleging similar core facts, but held that a narrower injunction could have targeted the filings arising from transactions already raised and litigated in earlier cases. The court found that the alleged similarity between the allegations in the plaintiff's current complaint and those presented in his earlier lawsuits did not provide grounds for dismissal of the complaint. (Georgia Department of Correction, Augusta State Medical Prison)

U.S. Appeals Court
DUE PROCESS
FRIVOLOUS SUITS
LEGAL MATERIAL

Monroe v. *Beard*, 536 F.3d 198 (3rd Cir. 2008). Prisoners brought a § 1983 action against various prison employees alleging their constitutional rights were violated when legal materials were confiscated. The district court granted the defendants' motion to dismiss and their motion for summary judgment. The prisoners appealed. The appeals court affirmed. The court held that the prisoners failed to state a claim for denial of

right of access to courts. The court held that the prisoners, claiming that prison officials confiscated all of their legal materials including legal briefs and reference books, failed to state a claim for denial of right of access to courts, absent specific facts demonstrating that underlying claims were non-frivolous or that underlying claims could no longer be pursued as a result of the officials' actions. (State Correctional Institute at Graterford, Pennsylvania)

U.S. District Court
TYPEWRITER

Nevada Dept of Corrections v. *Cohen*, 581 F.Supp.2d 1085 (D.Nev. 2008).The Nevada Department of Corrections (DOC) brought an action against inmates, seeking declaratory judgment that its ban on the personal possession of typewriters by inmates was constitutional. The DOC moved for summary judgment and the district court granted the motion. The court held that the ban: (1) was reasonably related to legitimate penological interests; (2) did not infringe upon inmates' right of access to courts; (3) reasonably advanced legitimate correctional goals; and (4) was not an unconstitutional "taking" where the prison regulated property that prisoners could legitimately possess while incarcerated and offered options to dispose of the property, and prisoners were not deprived of all economically beneficial use of typewriters. The court noted that prison officials had determined that possession of typewriters aided the ability of inmates to breach safety and security due to the potential use of typewriter parts as weapons. According to the court, since inmates were not required to file typewritten documents with courts, there was no evidence of actual injury or that the ban would foreclose any meaningful opportunities for inmates to pursue arguable claims. (Nevada Department of Corrections)

U.S. District Court
INITIAL APPEARANCE

Petaway v. *City of New Haven Police Dept*., 541 F.Supp.2d 504 (D.Conn. 2008). An arrestee brought a § 1983 action against a city, its police department, and individual officers, alleging that his constitutional rights were violated when he was not arraigned within the time prescribed under state law. The court held that the municipal police department was not subject to suit pursuant to § 1983 and that the arrestee was not falsely imprisoned during the 29-day period between his arrest and arraignment. According to the court, the Connecticut arraignment statute did not give rise to a due process liberty interest. The court noted that the arrestee was lawfully in the custody of the Department of Corrections pursuant to a remand to custody order for a separate parole violation during the 29 days prior to his arraignment. (New Haven Police Department, New Haven Correctional Center, Connecticut)

U.S. Appeals Court
SLEEP
LAW BOOKS
JAILHOUSE LAWYERS

Pierce v. County of Orange, 519 F.3d 985 (9th Cir. 2008). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims and the detainees appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the injunctive orders relating to the jail's reading materials, mattresses and beds, law books, population caps, sleep, blankets, dayroom access (not less than two hours each day), telephone access and communication with jailhouse lawyers were not necessary to correct current ongoing violations of the pretrial detainees' constitutional rights. Inmates had alleged that they were denied the opportunity for eight hours of uninterrupted sleep on the night before and the night after each court appearance. The court affirmed termination of 12 of the injunctive orders, but found that the district court erred in its finding that two orders were unnecessary. (Orange County, California)

U.S. District Court
PLRA- Prison Litigation Reform Act
RETALIATION FOR LEGAL ACTION

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
LEGAL MATERIAL

Rollins v. *Magnusson*, 542 F.Supp.2d 114 (D.Me. 2008). An inmate sued multiple defendants, alleging they were responsible for the confiscation of his legal briefs and research notes stored on prison-owned hard drives and back-up diskettes, in violation of his right of access to the courts. The district court held that the alleged confiscation did not impede his ability to litigate his appeal to such an extent that it impacted the outcome of the appeal, as required for an "actual injury" supporting his claim that he was denied his right of access to the courts. The court noted that his complaint was that he was having difficulty complying with deadlines because of impaired vision/medical conditions, and while he may not have had as much access to his legal materials as he wanted in the form he wanted, he was able to see his appeal through and obtain a ruling on the merits. (Maine State Prison)

U.S. District Court
LAW LIBRARY

Shell v. *Brun*, 585 F.Supp.2d 465 (W.D.N.Y. 2008). An inmate brought a § 1983 action against the employees of the New York State Department of Correctional Services (DOCS), alleging various constitutional violations. Following the dismissal of certain claims, the defendants moved for summary judgment on access to courts and failure-to-protect claims. The district court granted the motion. The court held that there was no evidence that a prison superintendent knew of the inmate's alleged problems with the law library that allegedly caused him difficulties in prosecuting a proceeding challenging a disciplinary report. According to the court, there was no evidence that any limitations on prison law library hours and book withdrawals were unreasonable, made it more difficult for the inmate to prosecute a state administrative proceeding challenging a misbehavior report, or that the outcome of the inmate's administrative proceeding would have been different but for those policies. The court noted that prison officials may place reasonable restrictions on inmates' use of facility law libraries, as long as those restrictions do not interfere with inmates' access to the courts. (Attica Corr'l Facility, New York)

U.S. Appeals Court
ACCESS TO ATTORNEY
TELEPHONE

Sherbrooke v. *City of Pelican Rapids*, 513 F.3d 809 (8th Cir. 2008). An arrestee sued a city and its police officers alleging that his Fourth Amendment rights were violated when officers recorded one side of his conversation with his attorney. The district court entered summary judgment for the arrestee and the defendants appealed. The appeals court reversed and remanded, finding that the recording of the conversation with the attorney did not constitute a search. The court found that the police officers' recording of one side of the suspect's conversation with his attorney, pursuant to a standard operating procedure of recording detainees who were awaiting a blood alcohol content breath test, did not constitute a search inasmuch as the suspect could not reasonably expect that the conversation was private. The court noted that officers were present when the call was made in an open room at the police station and the suspect acknowledged that the recording was "fine" with him. (City of Pelican Rapids, Minnesota)

U.S. District Court
ACCESS TO ATTORNEY
LEGAL MAIL
LEGAL MATERIAL

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 detainee alleged that his mail was opened and returned to him, thereby impeding his ability to communicate with his attorney, that his placement in close custody limited his ability to access legal materials, and that his placement in segregation barred him from contacting his attorney and potential witnesses. The district court dismissed in part. The court held that the inmate did not state a First Amendment claim for deprivation of access to courts, absent an allegation of actual injury in connection with his challenge to his conviction or sentence. (Vermont Department of Corrections)

U.S. District Court
TELEPHONE

Silas v. *City of New York*, 536 F.Supp.2d 353 (S.D.N.Y. 2008). An inmate sued a city and a city correctional officer for violations of § 1983 in connection with a claim for the use of excessive force. The defendants moved to enforce the terms of an oral settlement agreement, settling the matter for $1,500, that was made during a court proceeding at which the plaintiff participated by telephone. The court held that the oral agreement, made on the telephone by the inmate, was not made "in open court," as required under New York law to be enforceable. According to the court, the proceeding was entirely informal, and there was neither a transcription nor any other form of contemporaneous documentation of the terms of the agreement. (Marcy Correctional Facility, New York City Department of Corrections)

U.S. Appeals Court
PRO SE LITIGATION
VIDEO COMMUNICATION

Solis v. County of Los Angeles, 514 F.3d 946 (9th Cir. 2008). A state prisoner brought civil rights claims against a prison guard and others alleging that the guard was deliberately indifferent to his rights in failing to prevent an attack by other inmates. The district court entered summary judgment on some claims for the defendants and judgment for the prison guard following a bench trial on the remaining claims. The prisoner appealed. The appeals court reversed and remanded. The court held that the pro se prisoner was not given fair notice of the requirements of responding to, or consequences of losing on, a summary judgment motion and thus the entry of summary judgment against him was a reversible error. According to the court, the prisoner did not, by participating in the district court's bench trial by videotape depositions, which was conducted without the parties' presence, consent to the erroneous withdrawal of his prior jury demand. The court found that the erroneous denial of the prisoner's right to a jury trial was not harmless, where a reasonable jury could have found the prisoner's version of events more credible than the guard's and determined that the guard acted with deliberate indifference in failing to protect the prisoner from an attack by other inmates. (Los Angeles County, California)

U.S. District Court
ACCESS TO COUNSEL
CIVIL SUITS
LAW LIBRARY
LEGAL ASSISTANCE

Stanko v. *Patton*, 568 F.Supp.2d 1061 (D.Neb. 2008). A pretrial detainee brought two actions against jail personnel alleging a number of constitutional violations. The district court granted summary judgment for the defendants. The court noted that the detainee "…is a white supremacist. He is also a prolific pro se litigator who makes a habit of suing jail and prison officials when he is charged with a crime. Those facts are central to understanding these related civil cases." The court held that the detainee's alleged belief in the Church of the Creator and "White Man's Bible" was not protected and the jail had valid reasons for denying the detainee's alleged religious dietary requests. The court found that the detainee was not denied his right of access to the courts, notwithstanding his placement in segregation, where the detainee had been offered, and either accepted or declined, counsel in both underlying criminal prosecutions. The court noted that the detainee was provided with legal assistance and law library access, and the detainee was not substantially impeded regarding his legal matters whether he was in segregation or otherwise. According to the court, the detainee had no right to assistance from jail officials regarding his general civil litigation activities. The court held that a charge of $65 to the detainee's account by county jail officials, as discipline for ripping pages from or otherwise defacing several law books, did not violate due process, as the disciplinary procedures the detainee underwent provided him with all the process he was due and because he had additional remedies in state court if such procedures were insufficient. (Douglas County Correctional Center, Nebraska)

U.S. District Court
FILING FEES
IN FORMA PAUPERIS
PLRA- Prison Litigation Reform Act

Tafari v. *Hues*, 539 F.Supp.2d 694 (S.D.N.Y. 2008). A state inmate brought a § 1983 action against corrections officials, alleging mistreatment. The district court revoked the inmate's in forma pauperis (IFP) status pursuant to the Prison Litigation Reform Act (PLRA), and subsequently dismissed for failure to pay a filing fee. The inmate appealed. The appeals court vacated and remanded and the defendants moved for revocation of the inmate's IFP status. The district court denied the revocation motion, finding that partial dismissal of the inmate's complaint in a prior action was not a strike under the three-strikes rule. (Eastern Correctional Facility, New York)

U.S. Appeals Court
ADA-Americans With Disabilities Act

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
PLRA- Prison Litigation Reform Act
RETALIATION

Turner v. *Burnside*, 541 F.3d 1077 (11th Cir. 2008). A state prisoner brought a § 1983 action against various officials and employees of the Georgia Department of Corrections (DOC), alleging that he was subjected to cruel and unusual punishment and deliberately indifferent medical care. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded. The court held that the prisoner was not required to file an additional grievance or seek leave to file an emergency or out-of-time grievance. The court found that a prison official's serious threats of substantial retaliation against the prisoner for lodging a grievance could make the administrative remedy "unavailable" for the purpose of the Prison Litigation Reform Act (PLRA) exhaustion requirement, and the administrative remedy of filing an appeal would be unavailable. (Men's State Prison, Hardwick, Georgia)

U.S. Appeals Court
LEGAL MATERIAL

U.S. v. Gabaldon, 522 F.3d 1121 (10th Cir. 2008). After a federal prisoner's conviction for second-degree murder and kidnapping resulting in death were affirmed, he moved for post conviction relief. The district court dismissed the motion and the prisoner appealed. The appeals court vacated and remanded. The court held that confiscation of the prisoner's legal materials constituted extraordinary circumstances, where the prisoner exercised requisite due diligence by requesting the materials after they were seized. According to the court, confiscation of the prisoner's legal materials upon his entry into disciplinary segregation, just six weeks before the expiration of the limitations period on his post conviction relief claim, and the holding of such materials until two weeks after the limitations period expired, constituted extraordinary circumstances for the purposes of equitable tolling of the one-year limitations period on the prisoner's post conviction relief petition. (New Mexico)

U.S. Appeals Court
ACCESS TO ATTORNEY
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)

U.S. Appeals Court
TELEPHONE

U.S. v. *Verdin-Garcia*, 516 F.3d 884 (10th Cir. 2008). A defendant was convicted in district court of multiple crimes related to drug trafficking conspiracy and he appealed. The appeals court affirmed. The court held that the defendant's consent to the recording of his prison phone calls could be implied from his decision to use the prison telephone and therefore the voice exemplars used from prison recordings were admissible in trial. The court noted that a prison employee testified that prominent signs next to the telephones proclaimed "all calls may be recorded/monitored," in both English and Spanish. The defendant underwent orientation at the prison and received a handbook in his choice of English or Spanish which stated that all calls may be monitored. When the defendant made phone calls, a recorded message prompted him to select English or Spanish and then informed him in the language of his choice that all calls were subject to being monitored and recorded. (Correctional Corp. of America (CCA), Leavenworth, Kansas)

U.S. Appeals Court
DUE PROCESS
VIDEO COMMUNICA-TION

Wilkins v. *Timmerman-Cooper*, 512 F.3d 768 (6th Cir. 2008). An offender convicted in state court of rape filed a habeas petition challenging his parole revocation. The district court dismissed the petition and the offender appealed. The appeals court affirmed. The court held that the state court's determination that the use of videoconferencing technology for witness testimony at the parole revocation hearing did not violate the offender's right to confront witnesses and did not violate due process. The court found that the determination-- that the use of videoconferencing was sufficiently similar to live testimony to permit the parolee to observe and confront witnesses-- was not an unreasonable determination of the facts. The court noted that relevant Supreme Court decisions recognized that parolees had fewer rights in parole revocation hearings than in criminal trials and provided that conventional substitutes for live testimony were permitted at revocation hearings. The court noted that videoconferencing provided the parolee with the ability to observe and respond to the testimony of an accuser. The court commented that a videotape of the parole revocation hearing demonstrated that the parolee and counsel observed, heard and questioned in real time the witnesses who

testified via videoconferencing. (Ohio Department of Rehabilitation and Correction, Southern Ohio Correctional Facility)

2009

U.S. Appeals Court
LAW LIBRARY
RETALIATION

Bandy-Bey v. *Crist*, 578 F.3d 763 (8th Cir. 2009). A state prisoner brought a § 1983 action against prison officials. The district court awarded summary judgment for the officials, and the prisoner appealed pro se. The appeals court affirmed. The court held that the discipline imposed on the inmate for his alleged misrepresentations about a prison official in an officer kite form, in stating that the officer insisted that the inmate write his legal documents by hand, was not retaliatory. The court noted that the officer's directly contradictory incident report provided "some evidence" to support the disciplinary action. According to the court, the discipline imposed on the inmate for his alleged failure to follow an officer's direct order to go to another officer's office was not retaliatory, where the undisputed evidence showed that the inmate failed to follow the direct order. The court held that the inmate was not deprived of substantive due process, where he was not deprived of access to the courts and was not subjected to retaliatory discipline, and the disciplinary sanctions of 10 and 15 days' segregation imposed on him that prevented him from using the law library did not impede his ability to pursue a non-frivolous claim or offend a protected liberty interest. (Minnesota Correctional Facility in Lino Lakes, Minnesota)

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

Boyd v. *Driver*, 579 F.3d 513 ((5th Cir. 2009). Following his acquittal on charges of assaulting prison employees, a federal inmate filed a pro se *Bivens* action against numerous prison employees, alleging a "malicious prosecution conspiracy." The inmate alleged that prison employees committed perjury and tampered with evidence in his prosecution for assaulting employees. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that the inmate was not required to exhaust his administrative remedies with regard to his claim in his *Bivens* action, where the claim was not "about prison life" within the meaning of the exhaustion provision of the Prison Litigation Reform Act (PLRA). According to the court, the allegation by the inmate, that prison employees committed perjury and tampered with evidence in conspiring to maliciously prosecute him for assault, did not, without more, state any constitutional claim, as required to support a *Bivens* action. But the court held that allegations that prison employees gave perjured testimony at the inmate's criminal trial and destroyed and tampered with video evidence of the alleged assaults stated a claim for a due process violation, sufficient to support his *Bivens* action. (Federal Correctional Institution Three Rivers, Texas)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Bridges v. *Gilbert*, 557 F.3d 541 (7th Cir. 2009). A prisoner brought a § 1983 action against prison officials alleging that they retaliated against him for providing an affidavit in a deceased inmate's mother's wrongful death action, in violation of his First Amendment rights. The district court dismissed the complaint and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court found that the prisoner stated a claim for First Amendment retaliation, but failed to state a claim for denial of access to the courts. According to the court, the prisoner stated a § 1983 claim for First Amendment retaliation by alleging that he engaged in protected speech by filing an affidavit in the wrongful death action, that he suffered retaliation through: delays in his incoming and outgoing mail; harassment by an officer kicking his cell door, turning his cell light off an on, and opening his cell trap and slamming it shut in order to startle him; unjustified disciplinary charges; and improper dismissal of his grievances. The prisoner alleged that he would not have been harassed if he had not participated in the wrongful death action. The court found that the prisoner's participation in filing the affidavit was not sufficiently connected to the deceased inmate's rights to allow the prisoner to assert a denial of access retaliation claim based on his assistance to the deceased inmate. (Wisconsin Secure Program Facility)

U.S. District Court
LEGAL MAIL

Covell v. *Arpaio*, 662 F.Supp.2d 1146 (D.Ariz. 2009). A prisoner brought a § 1983 action against a county sheriff, alleging that the sheriff violated his First Amendment rights by instituting a policy that banned incoming letters and restricted incoming mail to metered postcards. The prisoner alleged that the mail policy prevented him from receiving legal mail from witnesses in his criminal case. The sheriff moved for summary judgment and the district court granted the motion. The court held that the jail's non-privileged mail policy which banned incoming letters and restricted incoming mail to metered postcards was reasonably related to a legitimate penological interest in reducing contraband smuggling. The court noted that alternative means, including postcards, telephones, and jail visits, existed. According to the court, allowing stamped mails would increase the likelihood of smuggling contraband into the jail, which would in turn lead to conflicts and violence, and there was no evidence that the prisoner's suggested alternative, by having staff inspect each piece of mail and remove the stamps, would accommodate the right at a de minimis cost to the jail. The court held that even if correspondence from a witness on the prisoner's witness list was improperly excluded by the county jail, in violation of the prisoner's right of access to the courts, the prisoner failed to allege any violation of the policy that was at the direction of the county sheriff, as required to render him liable under § 1983. (Maricopa County Lower Buckeye Jail, Arizona)

U.S. District Court
JAIL HOUSE LAWYERS
LEGAL ASSISTANCE
LEGAL MATERIAL
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. 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. The court found that regulations at a privately-owned federal prison facility prohibiting the prisoner from having the legal papers of another inmates in his cell did not chill the prisoner's exercise of his First Amendment right to provide legal assistance to fellow inmates, thus precluding liability on the part of the prison and its employees in the prisoner's § 1983 action alleging First Amendment retaliation. The court noted that the regulations reflected a legitimate penological objective in regulating when and where such assistance was provided. (Taft Correctional Institution, Wackenhut Corrections Corporation, California)

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

Crawford v. *Clarke*, 578 F.3d 39 (1st Cir. 2009). Muslim inmates confined in a special management unit (SMU) sued the Commissioner of the Massachusetts Department of Correction (DOC) under the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he violated their right to freely exercise their religion by preventing them from participating in Jum'ah Friday group prayer. The district court entered an injunction requiring closed-circuit broadcasting of Jum'ah in any SMU in which the plaintiff inmates were housed or might be housed in the future, and subsequently denied the commissioner's motion for reconsideration. The commissioner appealed. The appeals court affirmed. The appeals court held that the district court did not abuse its discretion in issuing the injunction requiring corrections officials to provide closed circuit television broadcasts of services in any SMU in which the plaintiff inmates were housed or might be housed in the future, as opposed to the SMU in which they were currently housed, without making findings as to whether other SMUs were suitable for closed circuit broadcasts. The court found that the injunction did not violate the Prison Litigation Reform Act (PLRA), where the prospective relief was narrowly drawn and providing closed-circuit broadcasting was the least intrusive means to alleviate the burden on the inmates' rights. The court noted that the commissioner put nothing in the record to differentiate other SMUs on the issues of a compelling governmental interest or least restrictive means. (Massachusetts Department of Correction, MCI-Cedar Junction)

U.S. District Court
LEGAL MATERIAL
RETALIATION

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 a corrections officer's failure to include the prisoner's legal documents in the prisoner's personal items when the prisoner was transferred to a special housing unit was unintentional and did not cause the prisoner to be prejudiced during legal proceedings, as required for the prisoner's First Amendment denial of access to courts claim against the officer. (Gouverneur Correctional Facility, Clinton Correctional Facility, New York)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation Reform Act
RETALIATION FOR LEGAL ACTION

Dace v. *Smith-Vasquez*, 658 F.Supp.2d 865 (S.D.Ill. 2009). A state prisoner brought a § 1983 action against prison employees, alleging that his exposure to excessively cold conditions during his incarceration resulted in a deprivation of his Eighth Amendment rights, and that employees unconstitutionally retaliated against him by exposing him to such conditions. The employees moved for summary judgment and the district court granted the motion. The court held that the prisoner failed to administratively exhaust his § 1983 claims against prison employees in accordance with Illinois Department of Corrections grievance procedures, as required by the Prison Litigation Reform Act (PLRA). According to the court, even if the employees failed to directly respond to some or all of the prisoner's grievances, the fact remained that the prisoner failed to take up those unresolved grievances with a Grievance Officer as required by the grievance procedures. The court found that the prisoner failed to establish that his prior lawsuit against prison officials and/or his filing of grievances was the "motivat-ing factor" for the alleged actions of prison employees, including exposing the prisoner to extreme cold, not allowing him to go to the commissary, handcuffing him, damaging his property, and not responding to his grie-vances, as would support his § 1983 retaliation claim against the employees. (Menard Correctional Center, Ill.)

U.S. District Court
ACCESS TO ATTORNEY

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 an attorney, who was an African-American woman, stated a § 1983 claim against the District of Columbia and D.C. jail official for violations of her Fifth Amendment due process rights by alleging that an official refused to allow her to visit her clients at the jail based on her gender and race. (Lorton and Rivers Correctional Centers, and District of Columbia Jail)

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

Espinal v. *Goord*, 558 F.3d 119 (2nd Cir. 2009). A district court granted partial summary judgment in favor of the state defendants on the prisoner's civil rights claim for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA), and the prisoner appealed. The appeals court affirmed in part, and reversed and remanded in part. The court held that state grievance procedures did not require an inmate to specifically name the responsible parties, and therefore the inmate did not fail to exhaust his administrative remedies under PLRA by omitting the names of the responsible parties from his prison grievance. The court found that the passage of only six months between the dismissal of the prisoner's lawsuit and an allegedly

retaliatory beating by officers, one of whom was a defendant in the prior lawsuit, was sufficient to support an inference of a causal connection, and therefore a genuine issue of material fact existed as to the causal connection element of the prisoner's First Amendment retaliation claim. (New York State Department of Correctional Services, Green Haven Correctional Facility)

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE

Fontroy v. *Beard*, 559 F.3d 173 (3rd Cir. 2009). Inmates sued state prison officials, claiming that a policy of opening legal and court mail outside their presence violated the First Amendment. The district court declared the policy unconstitutional in violation of the First Amendment. The prison officials appealed. The appeals court reversed, finding that the policy did not violate the First Amendment right of inmates to have mail opened in their presence. According to the court, the policy of requiring a control number on legal and court mail sent to inmates, opening mail without control numbers outside of inmates' presence, and inspecting for contraband before delivering mail to inmates, did not violate the First Amendment right of inmates to have mail opened in their presence. The court noted that the new legal mail policy was implemented to avoid abuse of the legal mail privilege, that the new policy was less burdensome on prison employees than the prior policy, that the inmates' proposed alternative could not be achieved at de minimis cost, and while inmates could not control whether courts or attorneys actually obtained control numbers, that alternatives were provided by new policy. (Pennsylvania Department of Corrections)

U.S. Appeals Court
TELECONFERENCE

Gevas v. *Ghosh*, 566 F.3d 717 (7th Cir. 2009). A prisoner brought a § 1983 action alleging prison staff members and administrators were deliberately indifferent to his serious medical needs. After a telephonic conference among all of the parties was held, an agreement was supposedly reached, but there was no court reporter or recording of the conference. The district court granted the defendants' motion to enforce the settlement agreement and ordered the prisoner to sign the release and settlement agreement within 30 days or have his case dismissed. The prisoner appealed. The appeals court affirmed. According to the court, the magistrate judge's failure to record the settlement agreement did not invalidate the settlement, and the magistrate judge did not coerce the prisoner into settling. The court noted that both parties assumed the risk that the judge would recall the discussion differently than they did, when neither asked that any part of the discussion be placed on the record. According to the court, having made no such request to have the discussion placed on the record, the prisoner had to live with the consequences. (Stateville Correctional Center, Illinois)

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

Griffin v. *Arpaio*, 557 F.3d 1117 (9th Cir. 2009). A state inmate brought a § 1983 action against a county sheriff and others, alleging cruel and unusual punishment and unsafe living conditions based on their failure to assign him a lower bunk for medical reasons. The defendants moved to dismiss for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). The district court granted the motion and the inmate appealed. The appeals court affirmed. Although the court found that a prison grievance need only alert the prison to the nature of the wrong for which redress is sought and the inmate's failure to grieve deliberate indifference to his serious medical needs did not invalidate his exhaustion attempt, the inmate did not properly exhaust administrative remedies under PLRA. The court held that the inmate's grievance regarding his need for a lower bunk assignment did not provide sufficient notice of the staff's alleged disregard of his lower bunk assignments to allow officials to take appropriate responsive measures, as required to properly exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) before he brought a § 1983 action. The officials responding to the inmate's grievance reasonably concluded that a nurse's order for a lower bunk assignment solved the inmate's problem. (Maricopa County Sheriff, Arizona)

U.S. Appeals Court
APPOINTED ATTORNEY
FILING FEES
IN FORMA PAUPERIS
PLRA-Prison Litigation Reform Act

Hagan v. *Rogers*, 570 F.3d 146 (3rd Cir. 2009). Fourteen state prisoners jointly filed a single § 1983 complaint, on behalf of themselves and a purported class, claiming violation of their Eighth and Fourteenth Amendment rights by prison officials' purported deliberate indifference to the exposure of prisoners to an outbreak of a serious and contagious skin condition, allegedly scabies. The prisoners sought class certification, requested to proceed in forma pauperis (IFP) under the Prison Litigation Reform Act (PLRA), and sought appointment of counsel. The district court denied joinder (combining actions), dismissed with leave to amend for all except one prisoner, and denied class certification. The prisoners appealed. The appeals court reversed in part, vacated in part, and remanded. The appeals court held that: (1) IFP prisoners were not barred from joinder by PLRA; (2) each joined prisoner was required to pay the full individual filing fee; and (3) the typicality and commonality requirements were satisfied for class certification. The court noted that prisoners proceeding in forma pauperis (IFP) remained within the definition of "persons" under the permissive joinder rule, and thus, the prisoners were not categorically barred from joinder in their civil rights action, despite concerns that joinder would undermine PLRA by permitting split fees or avoiding the three-strike rule that limited IFP status. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. Supreme Court
ACCESS TO COURT
CIVIL SUIT

Haywood v. *Drown*, 129 S.Ct. 2108 (2009). A state prisoner brought civil rights actions in the New York Supreme Court against several correction employees for allegedly violating his civil rights in connection with prisoner disciplinary proceedings. The action was dismissed as barred by a state "jurisdictional" statute requiring that such causes of action for damages arising out of the conduct of state corrections officers within the scope of their employment be filed against the state in the New York Court of Claims. The prisoner appealed. The New York Supreme Court Appellate Division affirmed, and the prisoner appealed. The New York Court of Appeals affirmed. The United States Supreme Court granted certiorari. The Supreme Court reversed and remanded. The court held that, having made the decision to create courts of general jurisdiction which regularly sat to entertain analogous civil rights actions against state officials other than corrections officers, New York was not at liberty to shut the doors of these courts to civil rights actions to recover damages from its corrections officers for acts within the scope of their employment, and to instead require that such damages claims be pursued against the state in another court of only limited jurisdiction. (New York)

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

Hernandez v. *Coffey*, 582 F.3d 303 (2nd Cir. 2009). A prisoner brought a civil rights action alleging that he was beaten by corrections officers and denied medical treatment by a nurse. The district court entered summary judgment in favor of the defendants on the basis of the prisoner's failure to exhaust administrative remedies. The prisoner appealed. The appeals court vacated and remanded. The appeals court held that the district court was required to first explain the procedural requirements for responding to a summary judgment motion and its potential consequences, and to provide the prisoner with an opportunity to take discovery and submit evidence in response to the motion. According to the appeals court, the district court could not convert the defendants' motion for judgment on the pleadings in the prisoner's pro se civil rights action into a motion for summary judgment, then grant the motion, extinguishing the claim, without first giving the prisoner notice of the conversion and an opportunity to take relevant discovery and to submit any evidence relevant to the issues raised by the motion. (Clinton Correctional Facility, New York)

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

Hinton v. *Corrections Corp. of America*, 623 F.Supp.2d 61 (D.D.C. 2009). An inmate sued the operators of a correctional facility under § 1983, asserting that overcrowded and unsanitary conditions had caused him to become infected with the methicillin-resistant Staphylococcus aureus (MRSA) bacteria. The district court granted the operators' motion for summary judgment, finding that the inmate failed to exhaust his administrative remedies. The court noted that the inmate had access to an inmate handbook, was familiar with parts of it, and did not dispute that he had other means of informing himself of the requirements of the official grievance process. (Central Treatment Facility, District of Columbia, operated by Corrections Corporation of America)

U.S. District Court
STATUTE OF LIMITATIONS

Hunt ex rel. Chiovari v. *Dart*, 612 F.Supp.2d 969 (N.D.Ill. 2009). A mother brought a § 1983 action against a county sheriff, unknown county corrections officers, unknown village police officers, and a village, for deprivation of her son's constitutional rights, arising out of his death while being transported to a county jail. The district court granted the defendants' motion to dismiss the unknown officers. The court held that the county sheriff's objection to a production request for personnel files of three officers did not lull the mother into delaying the suit, so as to prevent the officials from asserting the Illinois statute of limitations defense against the mother's claims under § 1983. (Cook County, Illinois)

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

Jones v. *Carroll*, 628 F.Supp.2d 551 (D.Del. 2009). A former inmate brought a § 1983 action against prison employees, alleging that they failed to protect him from an attack by another inmate. The prison employees moved for summary judgment, which the district court granted. The inmate moved for reconsideration. On reconsideration, the district court found that summary judgment was precluded for certain issues. The court held that summary judgment was precluded by a genuine issue of material fact as to whether an inmate's medical condition after having been stabbed by another inmate excused his failure to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA). The court also found that a genuine issue of material fact as to whether the inmate told prison officials about the violent threats he received from another inmate, precluded summary judgment on the inmate's Eighth Amendment failure to protect claim brought under § 1983. The court held that prison officials were not entitled to qualified immunity in their individual capacities in the § 1983 action alleging that officials failed to protect the inmate from serious harm from another inmate in violation of the Eighth Amendment. The court noted that case law put officials on notice that failure to protect an inmate from violence at the hands of another inmate violated an inmate's Eighth Amendment rights. (James T. Vaughn Correctional Center, Delaware Correctional Center, Smyrna, Delaware)

U.S. District Court
LEGAL MATERIAL TRANSFER

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. Appeals Court
PRIVILEGED CORRESPONDENCE

Merriweather v. *Zamora*, 569 F.3d 307 (6th Cir. 2009). A former federal prisoner filed a Bivens complaint claiming deprivation of his First, Fifth, and Sixth Amendment rights by prison mailroom employees' routinely opening and reading prisoner's mail outside of his presence, although the mail was marked as "legal mail" or "special mail" pursuant to Bureau of Prison's (BOP) regulations. The district court denied the employees summary judgment on the grounds of qualified immunity. The employees appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) a fact issue precluded summary judgment as to whether two envelopes from the prisoner's attorney were opened outside the presence of the prisoner; (2) an envelope from federal community defenders was properly labeled legal mail; (3) nine envelopes containing the word "attorney/client" were properly labeled legal mail; (4) prison employees' opening of the prisoner's legal mail outside his presence violated his clearly established First and Sixth Amendment rights; (5) prison mailroom supervisors were not protected by qualified immunity; but (6) prison mailroom employees were protected by qualified immunity. According to the court, the former prisoner's allegations that prison mailroom employees opened his legal mail outside his presence despite his repeated complaints to mailroom supervisors, were sufficient to find that mailroom supervisors acted unreasonably in response to the prisoner's complaints, precluding the supervisors' protection by qualified immunity. The prisoner alleged that the supervisors' conduct encouraged an atmosphere of disregard for proper mail-handling procedures, where one supervisor stated that the prison did not have to follow case law but only the Bureau of Prisons' (BOP) policy, and that other supervisors knew of the prisoner's complaints but did nothing to correct the admitted errors. (Mich. Fed. Det. Ctr., Fed Bureau of Prisons)

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

Merryfield v. *Jordan*, 584 F.3d 923 (10th Cir. 2009). A person who had been involuntarily committed to a state hospital brought an action against hospital officials, asserting a variety of claims relating to the conditions of his confinement and treatment, and seeking declaratory and injunctive relief. The district court dismissed the action and the committee appealed. He was granted permission to proceed in format pauperis (IFP) on appeal and ordered to make partial payments of the appellate filing fee through monthly payments from his institutional account. The appeals court held that, as a matter of first impression, the fee payment provisions of the Prison Litigation Reform Act (PLRA) applicable to prisoners did not apply to those who were civilly committed under the Kansas Sexually Violent Predator Act (KSVPA). (Sexual Predator Treatment Program, Larned State Hospital, Kansas)

U.S. Appeals Court
FRIVOLOUS SUITS
IN FORMA PAUPERIS
PLRA- Prison Litigation Reform Act

Mitchell v. *Federal Bureau of Prisons*, 587 F.3d 415 (D.C. Cir. 2009). A prisoner brought an action against the Bureau of Prisons (BOP), alleging that he needed medical treatment for Hepatitis B and C and that an omitted notation regarding his need for protective custody resulted in his improper transfer to a high-security facility known for murders and assaults on anyone known as a snitch. The district court denied the prisoner's motion to proceed in forma pauperis (IFP). Prisoner moved to proceed IFP on appeal. The appeals court denied the motion. The court held that the Prison Litigation Reform Act (PLRA) did not bar the prisoner from proceeding IFP, but the prisoner qualified as an abusive filer under *Butler* v. *Department of Justice*, which held that a court could deny IFP status to a prisoner who, though not technically barred by the PLRA, had nonetheless abused the privilege. The court noted that the prisoner had 63 prior cases, only two of which were "strikes" under the PLRA. (USP Florence, Colorado, Federal Bureau of Prisons)

U.S. Appeals Court
ACCESS TO COURT
LAW LIBRARY
LEGAL MATERIAL
PHOTOCOPYING

Ortiz v. *Downey,* 561 F.3d 664 (7th Cir. 2009). A federal pretrial detainee brought a § 1983 action against the chief of corrections at a detention center, alleging his rights under the First Amendment's Free Exercise Clause were violated. The district court dismissed the complaint and the detainee appealed. The appeals court reversed and remanded. The court held that the detainee stated a § 1983 claim that his First Amendment free exercise rights were violated by alleging that he was denied a religious rosary and a prayer booklet solely because a jail official did not find those items vital to worship. The court also found the alleged denial stated a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found that the detainee failed to allege that any deprivations in obtaining legal materials caused him an actual injury, as required to state a claim that his right of access to courts was denied. The court noted that a prisoner's complaint must spell out, in minimal detail, the connection between the alleged denial of access to legal materials and an inability to pursue a legitimate challenge to a conviction, sentence, or prison conditions to state a claim that his right to access the courts was denied. The detainee had asked jail officials to copy, at no charge, approximately fifty legal documents that pertained either to his pro se civil suit against his jailers or to his criminal prosecution. The detainee was represented by counsel in the criminal case, but was proceeding pro se in the civil matter. Jail officials told the detainee that he would be charged $1.00 per page, but also noted that copies regarding his criminal case would be provided at no charge. The detainee sought access to a law library and tried to subscribe to various legal periodicals, but his requests were denied. (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. District Court
APPOINTED ATTORNEY
PRO SE LITIGATION

Owens-Ali v. *Pennell*, 672 F.Supp.2d 647 (D.Del. 2009). A pro se state prisoner, a Moorish American National adherent, brought an action pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against prison officials, in their individual and official capacities, alleging that the officials violated his constitutional rights when they denied his request for a religious diet, and that the officials retaliated against him for his attempts to exercise his religious beliefs. The prisoner requested counsel. The court found that the prisoner's action was not so factually or legally complex that requesting an attorney to represent the prisoner was warranted. The court noted that the prisoner's filings in this case demonstrated his ability to articulate his claims and represent himself. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
ACCESS TO ATTORNEY
INTERROGATION

Padilla v. *Yoo*, 633 F.Supp.2d 1005 (N.D.Cal. 2009). *Reversed* 648 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. The court held that the detainee sufficiently alleged that the official's acts caused a constitutional deprivation, as required for the detainee's constitutional claims against the official. The detainee alleged that the senior government official intended or was deliberately indifferent to the fact that the detainee would be subjected to illegal policies that the official set in motion, and to a substantial risk that the detainee would suffer harm as a result, that the official personally recommended the detainee's unlawful military detention and then wrote opinions to justify the use of unlawful interrogation methods against persons suspected of being enemy combatants. According to the court, it was foreseeable that illegal interrogation policies would be applied to the detainee, who was under the effective control of a military authority and was one of only two suspected enemy combatants held in South Carolina.

The court found that the detainee's allegations that he was detained incommunicado for nearly two years with no access to counsel and thereafter with very restricted and closely-monitored access, and that he was hindered from bringing his claims as a result of the conditions of his detention, were sufficient to state a claim for violation of his right to access to courts against a senior government official. 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. Appeals Court
APPOINTED ATTORNEY
IN FORMA PAUPERIS
TELECONFERENCE

Palmer v. *Valdez,* 560 F.3d 965 (9th Cir. 2009). A state prison inmate brought a pro se § 1983 action against corrections officials, alleging use of excessive force in violation of the Eighth Amendment's prohibition of cruel and unusual punishment. Following a bench trial, the district entered judgment for the officials, and the inmate appealed. The appeals court affirmed. The court held that the district court did not abuse its discretion by declining to appoint counsel for the inmate under the in forma pauperis statute. The prisoner claimed that the district court improperly conditioned his use of telephonic testimony on his waiver of a jury trial, but the appeals court found that a bench trial that featured telephonic testimony was the prisoner's strategic choice. (California)

U.S. Appeals Court
BINDING

Phillips v. *Hust*, 588 F.3d 652 (9th Cir. 2009). An inmate brought a § 1983 action against a prison librarian, claiming that her failure to allow him access to a comb-binding machine violated his First Amendment right of access to the courts. The district court granted summary judgment to the inmate, and after a bench trial, awarded the inmate $1,500 in compensatory damages. A panel of the court of appeals affirmed, and the librarian's petition for a rehearing en banc was denied. The United States Supreme Court granted the librarian's petition for a writ of certiorari, vacated the panel opinion, and remanded. On remand, the appeals court reversed and remanded, finding that the librarian was entitled to qualified immunity. According to the court, it was objectively legally reasonable for the prison librarian to conclude that her denial of access to the comb-binding machine would not hinder the inmate's capability to file his petition for a writ of certiorari to the Supreme Court of the United States, and thus the librarian was entitled to qualified immunity from the inmate's § 1983 suit in light of the Supreme Court's flexible rules for pro se filings, which did not require and perhaps did not even permit comb-binding. (Snake River Correctional Institution, Oregon)

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

Phipps v. *Sheriff of Cook County*, 681 F.Supp.2d 899 (N.D.Ill. 2009). Paraplegic and partially-paralyzed pretrial detainees currently and formerly housed at a county prison brought a class action against the county and county sheriff, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The parties cross-moved for summary judgment. The district court denied the motions for summary judgment. The court held that the sheriff waived the affirmative defense that the plaintiffs failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where the sheriff raised that defense for the first time in his motion for summary judgment. The court held that paraplegic and partially-paralyzed pretrial detainees who were formerly housed at the county prison were not "prisoners confined in jail" for the purposes of the Prison Litigation Reform Act (PLRA), and thus their civil rights claims were not subject to, or barred by, PLRA. The court held that the pretrial detainees adequately alleged discrimination based on the prison's failure to provide wheelchair-accessible bathroom facilities. According to the court, the detainees met the PLRA physical injury requirement. In addition to alleging mental and emotional harm, the detainees complained of bed sores, infections, and injuries resulting from falling to the ground from their wheelchairs and toilets, which were undeniably physical injuries. (Cook County Department of Corrections, Illinois)

U.S. District Court
LEGAL MATERIALS

Ratcliff v. *Moore*, 614 F.Supp.2d 880 (S.D.Ohio 2009). State prisoners brought a § 1983 action against several prison officials and employees alleging a failure to accommodate their religious practices along with other constitutional violations under the First, Eighth, and Fourteenth Amendments. The district court granted partial summary judgment for the plaintiffs. The court denied summary judgment for the defendants, finding that genuine issues of material fact existed as to whether a prisoner was denied access to the court as a result of the prison's policy of restricting access to excess legal materials once every 30 days. The court found that any deprivation of the prisoner's exercise rights was not attributable to any "deliberate indifference" on the part of prison officials or employees, as required to support the prisoner's Eighth Amendment denial of exercise claim. The court noted that the prisoner voluntarily engaged in religious hunger strikes, was put on medical idle status because of the hunger strikes, refused medical treatment and continued his hunger strikes, all of which resulted in the extension of his medical idle status which affected his access to exercise. (Ross Correctional Institution, Southern Ohio Correctional Facility, Marion Correctional Institution, and Trumbull Correctional Institution, Ohio)

U.S. District Court
LAW LIBRARY
PLRA- Prison Litigation Reform Act

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 found that a prisoner who had his grievance denied because he no longer was in custody of the prison, and who never appealed to the final stage of the administrative program, did not exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA) before bringing a lawsuit regarding that grievance. 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. (N.Y. State Dept. of Correctional Services, Green Haven Correctional Facility)

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

Shaw v. *Jahnke*, 607 F.Supp.2d 1005 (W.D.Wis. 2009). A state prisoner brought a civil rights action against a corrections officer alleging excessive force. The district court denied the officer's motion for summary judgment. The court held that the prisoner had exhausted his administrative remedies. According to the court, the prisoner made sufficient efforts to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA), and that it was the corrections department's misinformation rather than any negligence or manipulation on the prisoner's part that prevented him from completing the grievance process. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
FRIVOLOUS SUITS
IN FORMA PAUPERIS

Shockley v. *McCarty*, 677 F.Supp.2d 741 (D.Del. 2009). A former inmate filed a pro se, in forma pauperis § 1983 action against prison officials alleging his Eighth Amendment rights were violated when an officer labeled him a "snitch." The district court denied the officials' motion to dismiss. The court held that a prison official's failure to include an affirmative defense of frivolousness in an answer to the former inmate's in forma pauperis § 1983 complaint waived the defense. The court noted that while the inmate's case might not succeed on the merits, the complaint was not indisputably meritless, fantastic, delusional or trivial, and contained sufficient factual matter to state a claim for relief. According to the court, the label of "snitch" in a prison posed serious risks to the inmate and could have incited others to harm him by identifying him as such. (Delaware Correctional Center)

U.S. District Court
VIDEO COMMUNITATION
TRANSPORTATION

Twitty v. *Ashcroft*, 712 F.Supp.2d 30 (D.Conn. 2009). A federal prisoner, who brought an action alleging that a state department of correction employee used excessive force in violation of the Eighth Amendment, moved for a writ of habeas corpus, requesting that Bureau of Prisons (BOP) transport him from Colorado to Connecticut to attend his civil trial. The district court denied the motion. The court held that expense and security concerns outweighed the prisoner's interest in physically appearing at the trial, precluding an issuance of a writ of habeas corpus. The court noted: (1) that it would cost the Bureau of Prisons about $70,000 to transport the prisoner from Colorado to Connecticut for the trial; (2) that he would be temporarily housed in a less secure facility than the one in Colorado; and (3) that transporting the prisoner between the facility and the courthouse, a trip of eighty miles in each direction, and supervising him during trial would require the assistance of multiple United States Marshals and presented a risk of escape, a risk of harm to law enforcement officers and danger to public. According to the court, the Colorado facility offered to permit the prisoner to appear at trial via videoconference, which was a reasonable alternative in the circumstances. (United States Penitentiary, Administrative Maximum, Florence, Colorado)

U.S. Appeals Court
ACCESS TO ATTORNEY
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
CRREA- Civil Rights Remedies Equalization Act of 1986

Van Wyhe v. *Reisch*, 581 F.3d 639 (8th Cir. 2009). Two inmates each brought an action against state prison officials, asserting various claims of interference with their free exercise of religion under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the officials' motions for summary judgment in part, and the officials appealed. The appeals court affirmed in part, reversed in part, dismissed in part, and remanded. The appeals court held: (1) the section of RLUIPA protecting inmates from imposition of substantial burdens on their religious exercise not justified by compelling state interests was a valid exercise of Congress's Spending Clause authority; (2) the section of RLUIPA conditioning a state's acceptance of federal funds on its consent to suit for appropriate relief did not unambiguously encompass monetary damages so as to effect a waiver of sovereign immunity from suit for monetary claims by acceptance of the federal money; (3) the section of RLUIPA protecting inmates from substantial burdens on religious exercise was not a statute prohibiting discrimination within the meaning of the Civil Rights Remedies Equalization Act of 1986 (CRREA); (4) the inmate made a threshold showing of a substantial burden on his religious exercise by alleging that officials denied his request to possess and use a succah and that the succah was a mandatory part of the Sukkot Festival and essential to the practice of his Jewish faith; but (5) the officials did not substantially burden the inmate's religious exercise by denying his request for additional weekly group religious and language study time; and (6) the officials did not substantially burden the inmate's religious exercise by denying his request to have and use a tape player in his cell for religious language studies. The court noted that RLUIPA promoted the general welfare by furthering society's goal of rehabilitating inmates and respecting individual religious worship. (South Dakota State Penitentiary)

U.S. District Court
APPOINTED ATTORNEY
IN FORMA PAUPERIS
PRO SE LITIGATION

Vann v. *Vandenbrook*, 596 F.Supp.2d 1238 (W.D.Wis. 2009). A prisoner brought a § 1983 action against a crisis intervention worker, registered nurse, and several corrections officers, alleging deliberate indifference to a serious medical need in violation of the Eighth Amendment. The prisoner moved to proceed in forma pauperis and for the appointment of counsel. The district court granted the motion to proceed in part and denied in part, and denied the motion for appointment of counsel. The court held that the prisoner's proffered reasons for appointment of counsel—that the case was legally and factually complex, that the claim required the testimony of medical experts, and that he lacked legal training to present the case, especially in front of a jury, were universal among pro se litigants and thus constituted insufficient grounds for the appointment of counsel. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
INDIGENT INMATES
LEGAL MAIL

Wesolowski v. *Washburn*, 615 F.Supp.2d 126 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against corrections employees, alleging that the employees violated his rights by interfering with his ability to send outgoing mail. The employees moved for summary judgment and the district court granted the motion. The court held that the employees did not violate the prisoner's right of access to the courts protected under the First Amendment when they correctly determined that certain mail did not qualify as “legal mail” under applicable corrections department regulations, and rejected certain letters and other items that the prisoner sought to mail because of his noncompliance with the regulations. The court noted that, at most, the prisoner was inconvenienced and had some delays in his outgoing mail. The court held that the employees did not violate the prisoner's right to the free flow of mail as protected under the First Amendment when they correctly determined that certain mail did not qualify as “legal mail” and rejected certain letters and other items. According to the court, all the employees did was to require the prisoner's compliance with regulations concerning outgoing mail. The court found that even if the employees had incorrectly determined that some of the prisoner's outgoing mail was not legal mail, and thus did not qualify for free postage, employees were entitled to qualified immunity from the prisoner's § 1983 action because the employees did not violate any of the prisoner's clearly established rights of which a reasonable person in the employees' position would have known. (Southport Correctional Facility, New York)

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

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. The court held that a former inmate of a county correctional facility was not required to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) prior to filing Eighth Amendment claims against prison officials and corrections officers under § 1983, where the inmate was not incarcerated at the time complaint was filed. (Mifflin County Correctional Facility, Lewistown, Pennsylvania)

2010

U.S. District Court
ASSISTANCE
LEGAL MATERIALS

Antonetti v. *Skolnik*, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The prisoner alleged that he was housed in segregation/isolation, leading to a mental health breakdown, and: (1) that he was seen by mental health professionals eight times over a five year period instead of every 90 days as required by administrative regulations; (2) that mental health professionals recommended he pursue art and music for his mental health but that prison officials denied him the materials; (3) and that the officials' actions resulted in the need to take anti-psychotic and anti-depression medications due to suffering from bouts of aggression, extreme depression, voices, paranoia, hallucinations, emotional breakdowns and distress, unreasonable fear, and systematic dehumanization. The court found that the prisoner's allegations were factually sufficient to state a

colorable § 1983 claim for a violation of his First Amendment right of access to courts, where the prisoner alleged that he was housed in segregation for several years and was repeatedly denied materials such as books, paper, pens and envelopes, as well as assistance from a law clerk. According to the court, the prisoner's allegations that officials deprived him of incoming mail without notice and without a post-deprivation remedy were factually sufficient to state a § 1983 claim under the First and Fourteenth Amendments. (High Desert State Prison, Nevada)

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

Dillon v. *Rogers*, 596 F.3d 260 (5th Cir. 2010). A pretrial detainee, who was transferred first to a temporary jail and then to a state corrections facility after Hurricane Katrina damaged a parish correctional center, brought a § 1983 action. The detainee alleged that he was beaten and mistreated while at the temporary jail, resulting in hearing loss and other injuries. The district court dismissed the action for failure to exhaust administrative remedies. The detainee appealed. The appeals court vacated and remanded for further discovery. The court held that the record was not sufficiently developed to determine whether administrative remedies were "available" for detainee to exhaust at the state facility, requiring remand. (Jefferson Parish, Louisiana)

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

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. District Court
PLRA-Prison Litigation Reform Act
APPOINTED ATTORNEY
RIGHT TO COUNSEL

Franco-Gonzales v. *Holder*, 767 F.Supp.2d 1034 (C.D.Cal. 2010). Aliens, who were diagnosed with severe mental illnesses, filed a class action, alleging that their continued detention without counsel during pending removal proceedings violated the Immigration and Nationality Act (INA), the Rehabilitation Act, and the Due Process Clause. The aliens moved for a preliminary injunction. The district court granted the motion in part. The court held that the aliens were not required to exhaust administrative remedies, since the very core of the aliens' claim was that without the appointment of counsel, they would be unable to meaningfully participate in the administrative process before the BIA, and the BIA did not recognize a right to appointed counsel in removal proceedings under any circumstances; therefore, resort to the BIA would be futile. The court held that the mentally ill aliens who were detained pending removal proceedings, without counsel and for prolonged periods without custody hearings, were entitled to a mandatory preliminary injunction requiring the immediate appointment of qualified counsel to represent them during their immigration proceedings and custody hearings. (Department of Homeland Security, Immigration and Customs Enforcement, Northwest Detention Center, Tacoma, Washington)

U.S. Appeals Court
EXPERT WITNESS
DUE PROCESS

Gayton v. *McCoy*, 593 F.3d 610 (7th Cir. 2010). The administrator of a female detainee's estate brought a § 1983 action against correctional facility officials and nurses, alleging they violated her due process rights by failing to provide adequate medical care. The district court entered summary judgment for the defendants, and the administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion in finding a physician unqualified to offer expert testimony that the detainee's death from non-specific heart failure would have been prevented had she been given her congestive heart failure medication, where the physician lacked specific knowledge in cardiology and pharmacology, and he provided no basis for his testimony except that the detainee's medication treated heart disease. But the appeals court held that the district court abused its discretion in finding the physician unqualified to offer expert testimony that the detainee's vomiting combined with her diuretic medication may have contributed to her tachycardia and subsequent death from non-specific heart failure. (Peoria County Jail, Illinois)

U.S. Appeals Court
INITIAL APPEARANCE
DUE PROCESS

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 the 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. The court 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. (Puerto Rico Department of Justice, Puerto Rico Administration of Corrections)

U.S. District Court
EXHAUSTION
LAW LIBRARY
RETALIATION

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. Appeals Court
FILING FEES
IN FORMA PAUPERIS
PLRA-Prison Litigation Reform Act

Harris v. *City of New York*, 607 F.3d 18 (2nd Cir. 2010). A prisoner brought an action under § 1983, alleging that he was assaulted by corrections officers. The district court dismissed the prisoner's complaint on the grounds that he had accumulated four strikes under the Prison Litigation Reform Act (PLRA), was not entitled to in forma pauperis status, and had not paid any filing fees. The prisoner appealed. The appeals court held that PLRA's three strikes limitation on in forma pauperis proceedings was applicable to the prisoner, even though he was released from prison subsequent to filing the complaint. The court found that PLRA's three strikes rule was not an affirmative defense that needed to be raised in the pleadings, and that the district court could rely on docket sheets to determine whether the three strikes rule applied. According to the court, the proper practice upon dismissal of the prisoner's suit was to permit him to apply for in forma pauperis status as a non-incarcerated plaintiff if he so qualified. (City of New York Department of Corrections, Riker's Island)

U.S. District Court
PLRA-Prison Litigation Reform Act
EXHAUSTION
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. Appeals Court
LAW LIBRARY

Hebbe v. *Pliler*, 627 F.3d 338 (9th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging denial of his right to court access and violations of the Eighth Amendment. The district court granted the defendants' motion to dismiss and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's allegations that prison officials denied him access to a prison law library while the facility was on lockdown, and that he was prevented from filing a brief in support of his state court appeal of his conviction, were sufficient to plead an actual injury as required to state a claim for violation of his First Amendment right to court access, and his Fourteenth Amendment right to due process. The court held that allegations by the state prisoner that prison officials forced him to choose between spending eight hours per week for eight months on either exercising outdoors or using the law library to research his § 1983 complaint and state-law habeas petition were sufficient to plead claim of an Eighth Amendment violation. (California State Prison-Sacramento C-Facility)

U.S. District Court
EXPERT WITNESS

Hunt ex rel. Chiovari v. *Dart*, 754 F.Supp.2d 962 (N.D.Ill. 2010). A pretrial detainee's estate brought a civil rights action against a sheriff, whose actions allegedly led to the death of detainee while he was in custody at a county jail. The district court granted the sheriff's motion for summary judgment. According to the court, the mere fact that the pretrial detainee died while he was in the custody of the sheriff at the county jail was not sufficient to give rise to an excessive force claim under the due process clause, without identifying any responsible officer, or providing any admissible evidence regarding what happened to the detainee or what the detainee or any officers in the vicinity were doing at the time of the detainee's collapse. The court found that the opinions of medical experts, that the detainee's death resulted from trauma to the head from an assault, "was hopelessly speculative" and therefore inadmissible. (Cook County Jail, Illinois)

U.S. Appeals Court
ADA- Americans with Disabilities Act
APPOINTED ATTORNEY

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
EXHAUSTION
PLRA-Prison Litigation Reform Act

Jones v. *Mathai*, 758 F.Supp.2d 443 (E.D.Mich. 2010). A prisoner brought an action against several prison officials, including a prison doctor, alleging retaliation and deliberate indifference to his serious medical needs. The district court denied the doctor's motion to dismiss or for summary judgment. The court held that the doctor was not entitled to dismissal of the prisoner's claims alleging retaliation for failure to exhaust, where the doctor had filed two motions for summary judgment, a motion to dismiss, and a motion for reconsideration that all determined the prisoner had exhausted his claim under the requirements of the Prison Litigation Reform Act of 1995. (Deerfield Correctional Facility, Michigan)

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

Kasiem v. *Switz*, 756 F.Supp.2d 570 (S.D.N.Y. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against the New York Department of Correctional Services (DOCS) and prison employees, alleging violations of his rights involving the defendants' purported failure to adequately treat his claimed hearing problems and related ear pain. The district court granted summary judgment for the defendants. The court held that the prisoner failed to exhaust his administrative remedies, as required under the Prison Litigation Reform Act (PLRA), prior to bringing a § 1983 action, where any grievances possibly covering his claims were never fully exhausted or became exhausted only months after the suit was filed. (Sullivan Correction Facility, New York)

U.S. District Court
LEGAL MAIL

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. (Arkansas Department of Corrections)

U.S. Appeals Court
LEGAL MAIL
LAW LIBRARY

Olson v. *Brown*, 594 F.3d 577 (7th Cir. 2010). An inmate at a county jail which served as a temporary detention center filed a class action in state court against a sheriff, alleging that procedures at the jail violated Indiana law and the inmates' First Amendment rights. The inmate challenged jail staff's alleged practices of opening inmates' legal mail, denying inmates access to the law library, and failing to respond to inmates' grievances. The case was removed to federal court. The inmate moved for class certification but he was transferred out of jail before the court's ruling. The district court granted the sheriff's motion for judgment on the pleadings and dismissed action as moot. The inmate appealed. The appeals court reversed and remanded, finding that the inherently transitory exception to the mootness doctrine prevented dismissal of the case. The court noted that even though the inmate was transferred out of the jail prior to certification of his class action, there would likely be a constant class of persons suffering the deprivation complained of in the inmate's complaint. (Tippecanoe County Jail, Indiana)

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

Parzyck v. *Prison Health Services, Inc*., 627 F.3d 1215 (11th Cir. 2010). A prisoner who was denied an orthopedic consultation for his continual and severe back pain brought a civil rights action to recover for prison officials' alleged deliberate indifference to his medical needs. The district court dismissed the complaint for failure to exhaust administrative remedies and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner did not have to file new grievances addressing every subsequent act by prison official that contributed to the continuation of a problem already raised in an earlier grievance in order to exhaust his administrative remedies. The court noted that the prisoner had demonstrated "meticulous respect" for the corrections department's administrative grievance procedures.(Apalachee Correctional Institution, Florida)

U.S. Appeals Court
ACCESS TO COURT
FILING FEES
INITIAL APPEARANCE

Qureshi v. *U.S*., 600 F.3d 523 (5th Cir. 2010). A detainee filed a complaint against the United States seeking damages under the Federal Tort Claims Act based on his allegedly unlawful detention by the Department of Homeland Security. The district court issued an order requiring him to obtain the court's permission before filing suit in any federal court in the state of Texas, and the detainee appealed. The appeals court vacated and remanded. The appeals court held that the pre-filing injunction was invalid where the district court entered the injunction without affording the detainee prior notice or the opportunity to oppose the injunction or be heard on its merits. (Texas)

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

Russo v. *Honen*, 755 F.Supp.2d 313 (D.Mass. 2010). A federal prisoner brought a § 1983 action against a sheriff and various medical officials, alleging withholding of necessary medical treatment in violation of the Eighth Amendment. The defendants filed a motion to dismiss or in the alternative for summary judgment. The district court denied the motion. The court held that genuine issue of material fact existed as to whether the federal prisoner was denied access to the inmate grievance forms required to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA). (Plymouth County Correctional Facility, Massachusetts)

U.S. Appeals Court
APPOINTED ATTORNEY
IN FORMA PAUPERIS

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. 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
PLRA-Prison Litigation Reform Act
ATTORNEY FEE

Shepherd v. *Wenderlich*, 746 F.Supp.2d 430 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against prison officials and related defendants for alleged violations of his First Amendment right to free exercise of religion, as well as his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment upon a jury verdict for the prisoner against two of the defendants, awarding $1 in actual damages. The prisoner moved for post-trial relief. The district court held that the prisoner was the "prevailing party" in the action and that he had satisfied statutory requirements, under the Prison Litigation Reform Act (PLRA), for the award of attorney fees as the "prevailing party." The court held that a cap on the award of attorney fees of 150% under PLRA was applicable to the prisoner's action. The prisoner originally sought attorneys' fees totaling $99,485.25, which were later reduced to $46,575. The district court awarded attorneys' fees against the two defendants in the amount of $1.40 and awarded costs against the two defendants in the total amount of $2,124. (Elmira Correctional Facility, New York)

U.S. Appeals Court
EQUAL PROTECTION
LEGAL MAIL
RIGHT TO COUNSEL
DUE PROCESS

Stanley v. *Vining*, 602 F.3d 767 (6th Cir. 2010). A prisoner filed a § 1983 action against prison officials, claiming deprivation of his constitutional rights by a prison guard who was allegedly reading the prisoner's legal mail in the prisoner's presence in his cell in violation of a prison regulation, and by issuing a prison misconduct charge against the prisoner after an exchange of angry words. The district court granted the defendants' motion to dismiss for failure to state a claim. The prisoner appealed. The appeals court affirmed. The court held that although the prisoner had a liberty interest in receiving his mail, under the First Amendment, the prisoner was not deprived of his procedural due process rights based on the prison guard allegedly violating a prison regulation by reading the prisoner's mail in the prisoner's presence in his cell. The court noted that the prisoner received a post-deprivation hearing, as part of the prison grievance procedure, which determined that the guard had not read mail in violation of regulation.

The court found that the prisoner's allegation that the guard issued a misconduct charge against him over their dispute that the guard allegedly read the prisoner's legal mail did not rise to the level of a valid § 1983 claim, where the prisoner failed to allege that the charge interfered in any way with his rights to counsel, access to courts, equal protection, or procedural due process. The court noted that the complaint stated no facts or theories from which the court could devise a plausible constitutional claim, and did not even divulge what the disposition of the charge was. According to the court, no constitutional provision flatly prohibits, as unlawful censorship, a prison from opening and reading a prisoner's mail, unless it can be shown that the conduct interferes with the prisoner's right to counsel or access to the courts, or violates his rights of equal protection or procedural due process. "We find no per se constitutional rule that such conduct automatically violates a broad, general rule prohibiting censorship, as our dissenting colleague seems to imagine. (Alger Maximum Correctional Facility, Michigan Department of Corrections)

U.S. District Court
LEGAL MAIL
TRANSFER

Tafari v. *McCarthy*, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel. 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. (New York State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. Appeals Court
FILING FEES
IN FORMA PAUPERIS
PLRA-Prison Litigation Reform Act

Taylor v. *Watkins*, 623 F.3d 483 (7th Cir. 2010). A state prisoner filed a § 1983 action against officers and employees of the Illinois Department of Corrections, claiming violation of his civil rights by allegedly contaminating his food, tampering with his mail, depriving him of sleep, and assaulting him. Following an evidentiary hearing, the district court denied the prisoner's request to proceed in forma pauperis (IFP), upon concluding that he was not in imminent danger as required for the three-strikes provision of the Prison Litigation Reform Act (PLRA), and subsequently dismissed action after the prisoner failed to pay the filing fee. The prisoner appealed and requested leave to proceed IFP. The appeals court denied the request. The court held that a prior evidentiary hearing was required to consider contested imminent danger allegations, ordering the prisoner to pay the filing fee if he wanted the case to go forward. (Illinois Dept. of Corrections)

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

Torres v. *O'Quinn*, 612 F.3d 237 (4th Cir. 2010). An inmate brought an action against state prison officials, complaining that the officials failed to repair a malfunctioning night-light in his prison cell, resulting in a disturbing strobe effect. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. The inmate appealed and the appeals court affirmed. The inmate then brought a separate action against prison officials, alleging a constitutional violation due to the prison's prohibition of his subscription to commercially available pictures of nude women. The district court dismissed the action for failure to state a claim upon which relief could be granted, the inmate appealed, and the appeals court dismissed the appeal. The inmate then moved for a partial refund of filing fees that had been collected from his prison trust account, challenging the prison's practice of withholding 40 percent of his account to satisfy the filing fee requirement for his two appeals. The appeals court found that PLRA required that no more than 20 percent of an inmate's monthly income be deducted to pay filing fees, irrespective of the total number of cases or appeals the inmate had pending at any one time. The court held that granting the inmate a partial refund of fees was not warranted since the amounts withheld from the inmate's account were actually owed and were properly, if excessively, collected. (Red Onion State Prison, Virginia)

U.S. District Court
SPEEDY TRIAL

Varricchio v. *County of Nassau*, 702 F.Supp.2d 40 (E.D.N.Y. 2010). A detainee brought a § 1983 action against a county and officials, alleging civil rights violations. The defendants moved for dismissal. The district court granted the motion in part and denied in part. The court held that the detainee adequately alleged that he was denied his right to a speedy trial and that he was presumptively prejudiced by the delay, as required to state a § 1983 claim for a Sixth Amendment violation. The detainee alleged he was held for two years in prison prior to receiving trial for the charge of violating a protective order, and that he was subsequently found not guilty. The court held that the detainee adequately alleged that his conditions of confinement constituted cruel and unusual punishment, as required to state an Eighth Amendment claim. The detainee alleged that he received tainted food that contained bodily waste, soap, metal pins, and staples, and that, when he went on a hunger strike to protest his legal situation, deputy sheriffs were taking bets on when he would start eating again. (Nassau County Sheriff's Department, New York)

U.S. District Court
INITIAL APPEARANCE
DUE PROCESS

Waker v. *Brown*, 754 F.Supp.2d 62 (D.D.C. 2010). An arrestee, proceeding pro se, brought a § 1983 action against various defendants, including the District of Columbia mayor and police chief. The defendants filed motions to dismiss and the arrestee filed a motion to compel the identities of police and Department of Corrections (DOC) officers. The district court granted the defendants' motions in part and denied in part, and denied the plaintiff's motion. The court held that police officers did not violate the arrestee's due process rights in arresting him and detaining him for several days, where the arrest was based upon a fugitive warrant from another county that was not invalidated or based upon mistaken identity, and the arrestee appeared before a court and was released on his own recognizance. The arrestee had been held for six days in jail prior to his release. (District of Columbia Jail)

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

Ward v. *Rabideau*, 732 F.Supp.2d 162 (W.D.N.Y. 2010). Jewish prison inmates at a state correctional facility brought a § 1983 action against prison officials, alleging their First Amendment rights were violated by the defendants' failure to properly accommodate their religious needs. The defendants moved for summary judgment. The district court denied the motion. The court found that summary judgment was precluded by genuine issues of material fact as to whether "special circumstances" existed so as to excuse the two inmates' failure to exhaust administrative remedies, pursuant to the Prison Litigation Reform Act (PLRA), prior to bringing a § 1983 action against prison officials. The court held that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer treated Jewish prison inmates differently on account of their religion. The court also found a genuine issue of material fact as to whether cold alternative meals available in a state correctional institution violated the Jewish inmates' constitutional right to a kosher diet, pursuant to the inmates' rights to religious liberty under First Amendment. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether prison officials prevented Jewish inmates from having materials necessary to their worship, on the inmates' claim that the officials failed to make reasonable accommodation to their religious beliefs in violation of the First Amendment, by not providing a rabbi or religious materials in the correctional facility. (Groveland Correctional Facility, New York)

U.S. Appeals Court
LAW LIBRARY
JAIL HOUSE LAWYERS

Watkins v. *Kasper*, 599 F.3d 791 (7th Cir. 2010). A state inmate who was a prison law clerk brought a § 1983 action against a prison law librarian, alleging retaliation for the inmate's exercise of his free speech rights. Following a jury verdict for the inmate, the district court denied the librarian's motions for judgment as a matter of law or for a new trial. The librarian appealed. The appeals court reversed and remanded with instructions. The court held that the inmate law clerk's speech that criticized prison library policies requiring that clerks not help other inmates prepare their legal documents and not store the clerks' personal legal materials in the library was not protected by the First Amendment. The court found that the speech had a

negative impact on the prison librarian's legitimate interests in discipline and providing efficient library services, particularly since it amounted to advocacy on behalf of other inmates, and the inmate had an alternative means to express his complaints. The court also found that the inmate law clerk's oral complaint to the prison librarian about the placement of his personal materials in the library was not protected by his First Amendment right to free speech, where the complaint was made in a confrontational, disorderly manner. (Miami Correctional Facility, Indiana)

2011

U.S. Appeals Court
PRIVILEGED CORRES-PONDENCE/MAIL

Al-Amin v. *Smith*, 637 F.3d 1192 (11th Cir. 2011). A state prison inmate brought a § 1983 action against state corrections officials, alleging that the officials had repeatedly opened his privileged attorney mail outside of his presence, in violation of his rights of access to the courts and free speech. The district court denied the officials' motion for summary judgment. The appeals court affirmed in part and reversed in part, and denied rehearing en banc. The United States Supreme Court denied certiorari. On remand, the district court granted the officials' motion, precluding the inmate from offering evidence of either compensatory or punitive damages. The inmate appealed. The appeals court affirmed, finding that the prisoner could not seek punitive damages relief absent a physical injury, under the provisions of the Prison Litigation Reform Act. (Georgia State Prison)

U.S. District Court
DUE PROCESS
INITIAL APPEARANCE

Alexander v. *City of Muscle Shoals, Ala*., 766 F.Supp.2d 1214 (N.D.Ala. 2011). A pretrial detainee sued a city, city police officers, jailers, a mayor, and city council members, asserting § 1983 claims alleging deliberate indifference to his serious medical needs and his health and safety. The court found that qualified immunity applied to bar the § 1983 liability of jailers for deliberate indifference to the serious medical needs of the pretrial detainee, because the detainee failed to argue against the qualified immunity defense. According to the court, once a defendant raises a defense of qualified immunity, the plaintiff bears the burden of establishing both that the defendant committed the constitutional violation and that the law governing the circumstances was already clearly established at the time of the violation, and the detainee failed to adequately respond to the qualified immunity defense. The court noted that the jailers did not contact medical professionals at the detainee's request for four days at most, and that the detainee, who complained that he was in pain, at that point had been without prescription pain medication to which he was addicted for at least three days. The court also noted that the detainee had already faked a suicide attempt to garner jailers' attention and had also been both combative and difficult. (City of Muscle Shoals Municipal Jail, Alabama)

U.S. Appeals Court
RECORDS
EVIDENCE

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
PLRA- Prison Litigation Reform Act
EXHAUSTION

Annoreno v. *Sheriff of Kankakee County*, 823 F.Supp.2d 860 (C.D.Ill. 2011). A federal pretrial detainee brought a § 1983 action against a county sheriff, correctional officers, and others, alleging that the officers assaulted him while in their custody. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) prior to filing suit. According to the court, the detainee's submission of a "sick call slip," rather than an "inmate grievance form," regarding an alleged assault committed upon him by corrections officers, was inadequate to exhaust administrative remedies under PLRA, and thus the district court lacked jurisdiction over the detainee's § 1983 action. The court noted that sick call slips were submitted directly to medical department and not forwarded to administrative staff who received inmate grievance forms, the inmate handbook required that complaints be submitted in writing on an inmate grievance form, and the detainee knew that grievance forms were used in the facility and had filed multiple grievance forms prior to the incident in question. (Jerome Combs Detention Center, Kankakee County, Illinois)

U.S. District Court
LAW LIBRARY
TELEPHONE

Bradley v. *Mason*, 833 F.Supp.2d 763 (N.D.Ohio 2011). State inmates filed a § 1983 action asserting multiple causes of action pertaining to their convictions and conditions of confinement. The district court dismissed the case, finding that class certification was not warranted, where the inmates made no attempt to define the class, many claims were specific to named plaintiffs, and the plaintiffs were proceeding pro se. The court held that a pretrial detainee had no reasonable expectation of privacy in telephone calls made from within jail to individuals other than his attorney, and thus jail officials did not violate the detainee's Fourth Amendment rights by monitoring his calls to his former spouse.

The court held that the county inmates lacked standing to raise a claim that the county jail's lack of a law library violated their due process rights, where the inmates did not claim that they attempted to exercise the right of self-representation and did not otherwise have access to legal materials. According to the court, the county jail's removal of its law library was rationally related to its interest in reducing expenses, and thus did not violate the inmates' equal protection rights. The court noted "…because Plaintiff's claim for law library is

not explicitly or implicitly guaranteed by the Constitution, it is not a fundamental right. Therefore, the prison's policy need only bear a rational relationship to a legitimate state interest." (Cuyahoga County Jail, Ohio)

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

Davis v. *Correctional Medical Services*, 760 F.Supp.2d 469 (D.Del. 2011). A state inmate filed a § 1983 action alleging that prison medical officials failed to provide mental health treatment, failed to follow policies and procedures to prevent officers and other inmates from harassing him, and failed to provide adequate medical treatment for his broken nose. The district court granted the officials' motions to dismiss and for summary judgment. The court held that the failure of the prison's mental health administrator to speak to the inmate or to investigate his complaint regarding his treatment and his living conditions did not violate any recognizable constitutional right, as required to sustain the inmate's § 1983 claim against the administrator. The court held that the inmate adequately exhausted his administrative remedies under the Prison Litigation Reform Act (PLRA) regarding medical treatment for his fractured nose, as required to file suit under § 1983 in federal court regarding his treatment, even though he did not appeal the grievance resolution decisions, where the grievances were resolved in the inmate's favor. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
SELF INCRIMINATION

Doe v. *Heil*, 781 F.Supp.2d 1134 (D.Colo. 2011). A state prisoner convicted of a sex offense filed a § 1983 action, alleging that Department of Corrections (DOC) regulations requiring him to provide a full sexual history and to pass a polygraph examination in order to participate in a sex offender treatment program violated his constitutional rights. The defendants moved to dismiss. The district court granted the motion. The court held that the regulations did not violate the prisoner's Fifth Amendment privilege against self-incrimination. According to the court, the DOC had a legitimate penological interest in having convicted sex offenders complete a treatment program before being released on parole. The court found that the prisoner lacked a due process liberty interest in participating in a sex offender treatment program. (Colorado Department of Corrections Sex Offender Treatment and Monitoring Program)

U.S. District Court
ACCESS TO ATTORNEY
DUE PROCESS

Franco-Gonzales v. *Holder*, 828 F.Supp.2d 1133 (C.D.Cal. 2011). Immigrant detainees brought a putative class action on behalf of mentally disabled detainees being held in custody without counsel during removal proceedings, asserting claims under the Immigration and Nationality Act (INA), Rehabilitation Act, and Due Process Clause. A detainee who was a native and citizen of Belarus, and who had been deemed mentally incompetent to represent himself in removal proceedings, moved for a preliminary injunction. The district court granted the motion in part. The court held that: (1) the detainee was entitled to a custody hearing at which the government had to justify his continued detention on the basis that he was a flight risk or would be a danger to the community; (2) a qualified representative for a mentally incompetent immigrant detainee may be an attorney, law student or law graduate directly supervised by a retained attorney, or an accredited representative; (3) the detainee's father could not serve as a qualified representative for detainee at a custody hearing; (4) appointment of a qualified representative to represent the detainee at a custody hearing was a reasonable accommodation under the Rehabilitation Act; (5) the likelihood of irreparable harm and the balance of hardships favored the detainee; and (6) a mandatory injunction was warranted. (Sacramento County Jail, California)

U.S. District Court
LAW LIBRARY
WRITING MATERIAL

Guarneri v. *West*, 782 F.Supp.2d 51 (W.D.N.Y. 2011). A former prisoner brought a pro se action against numerous correctional facilities' employees for constitutional claims arising during his incarceration. The defendants moved for summary judgment. The district court granted the motion. The court held that the fact that the prisoner was not permitted to go to a law library as frequently as he wanted, or was not issued a sufficient supply of writing paper, did not constitute denial of access to courts. The court noted that there was no evidence of harm in his ability to contest his underlying criminal conviction or to fully litigate other grievances and proceedings. According to the court, the prisoner failed to explain how his more than 50 documented visits to prison law libraries were insufficient to permit him to fully litigate his convictions and grievances, identify any papers he was unable to file due to the lack of paper, or specify an actual injury that resulted from the correctional facility's failure to provide him with unlimited access to the libraries. (Elmira Correctional Facility, New York)

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

Hale v. *Rao*, 768 F.Supp.2d 367 (N.D.N.Y. 2011). An inmate brought an action against prison officials alleging deliberate indifference to his serious medical needs, and alleging that the conditions of his confinement violated the Eighth Amendment. Prison officials moved for summary judgment. The district court granted the motion in part and denied in part. The court excused the state inmate's failure to exhaust administrative remedies prior to bringing the claim in federal court because prison staff had thrown out a grievance filled out by another inmate on the inmate's behalf, refused to provide the inmate with the materials needed to file another grievance, and threatened to physically assault him if he attempted to utilize the grievance procedure. The court noted that the inmate was illiterate and had a poor understanding of the grievance procedure. (Downstate Correctional Facility, New York)

U.S. Appeals Court
FRIVOLOUS SUITS
IN FORMA PAUPERIS
LAW LIBRARY
LEGAL MAIL
PLRA- Prison Litigation Reform Act

Haury v. *Lemmon*, 656 F.3d 521 (7th Cir. 2011). A prisoner, proceeding pro se, brought a § 1983 action against prison personnel, alleging they interfered with delivery of his legal mail and failed to provide a sufficient law library. The district court denied the prisoner's motion to proceed in forma pauperis and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that dismissal of the prisoner's prior lawsuit for lack of jurisdiction did not warrant imposing a strike for filing frivolous actions in determining whether the prisoner could proceed in forma pauperis under the Prison Litigation Reform Act (PLRA) in his current § 1983 action. (Indiana)

U.S. District Court
INVESTIGATION
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. Appeals Court
IN FORMA PAUPERIS
PRO SE LITIGATION

Hoskins v. *Dart*, 633 F.3d 541 (7th Cir. 2011). A state prisoner filed a civil rights action against a county sheriff and corrections officers. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that the prisoner, proceeding pro se and in forma pauperis (IFP), who had been actively litigating three other cases, was not entitled to omit his litigation history in subsequent case on the basis that another prisoner had told him that he could ignore that portion of the complaint form. According to the court, the prisoner was subject to sanctions for fraudulent litigation conduct because the omission could be considered both material and intentional, since the prisoner had signed the form, his signature certified the truth of the entire complaint, and the complaint had contained highlighted instructions ordering him to list those lawsuits. The court held that dismissal with prejudice of all of the prisoner's cases was an appropriate sanction. (Cook County Sheriff, Illinois)

U.S. District Court
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. (United States Marshal for the Superior Court of the District of Columbia)

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

Khatib v. *County of Orange*, 639 F.3d 898 (9th Cir. 2011). A former detainee sued a county for allegedly violating the Religious Land Use and Institutionalized Persons Act (RLUIPA) by requiring her to remove her headscarf, in public, against her Muslim religious beliefs and practice, while she was held on two occasions in a county courthouse holding facility pending disposition of her probation violation. The district court granted the county's motion to dismiss for failure to state a claim and the detainee appealed. The appeals court reversed and remanded, finding that the holding facility was an "institution" under RLUIPA. According to the court, the county courthouse holding facility was a "pretrial detention facility," and thus was an "institution" under RLUIPA, where the facility's main purpose was to temporarily hold individuals who were awaiting court proceedings, including individuals awaiting trial. The court noted that although the facility housed inmates for relatively short periods, it held up to 600 inmates a day, and was described by the county as a secure detention facility for the confinement of persons making a court appearance. According to the court, the short-term detainee was not required to satisfy PLRA's exhaustion requirements before suing for the county's alleged violation of RLUIPA in failing to accommodate her religious beliefs. (Orange County Santa Ana Courthouse, California)

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

Knox v. *Bland*, 632 F.3d 1290 (10th Cir. 2011). A state inmate who had unsuccessfully sought in state court to have his name changed for religious reasons brought a pro se action under § 1983 against eight state-court judges, seeking mandamus and injunctive relief, and contending that the defendants violated his Fourteenth Amendment rights to equal protection and due process, his First Amendment rights to freedom of religion and to petition the government for redress of injustice, the Seventh, Ninth, and Thirteenth Amendments, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court dismissed the complaint as frivolous and malicious under a prisoner complaint screening statute. The inmate appealed. The appeals court affirmed, finding that federal courts lacked the authority to issue a writ of mandamus ordering state-court judges to take action in their capacities as such, that the inmate could not obtain injunctive relief against the state-court judges under § 1983, and that the inmate's claims were "frivolous" within meaning of prisoner complaint screening statute. (Oklahoma State Penitentiary)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation Reform Act
RETALIATION FOR LEGAL ACTION

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. (Calif. Dept. of Corrections and Rehabilitation)

U.S. Appeals Court
LEGAL RESEARCH

McCree v. *Grissom*, 657 F.3d 623 (7th Cir. 2011). A federal inmate brought a Bivens action against prison officers, alleging denial of access to the courts. The district court dismissed the complaint and the inmate appealed. The appeals court affirmed. The court held that the inmate was not denied access to the courts in his previous § 1983 action by being placed in special housing, which had a new research system he did not know how to use and he was not instructed in its use. The court noted that the inmate filed a notice of appeal, a motion to proceed in forma pauperis, a motion to reconsider the denial of that motion, and a motion to suspend appeal. (Federal Correctional Institution Greenville, Illinois)

U.S. District Court
LEGAL MAIL

Neff v. *Bryant*, 772 F.Supp.2d 1318 (D.Nev. 2011). A prisoner brought a § 1983 action against a warden, caseworker and correctional officers, alleging violations of the First, Eighth and Fourteenth Amendments. After dismissal of the prisoner's claims, the prisoner filed an amended complaint. The court found that the prisoner's allegations that legal materials mailed to him were intercepted and withheld, and that as a result he lost a motion related to a civil claim, were insufficient to state a § 1983 claim for denial of access to the courts in violation of the First Amendment, absent allegations as to the nature of the motion, or that the result of the failed motion was the loss of a non-frivolous direct criminal appeal, habeas corpus petition, or § 1983 claim. (Ely State Prison, Nevada)

U.S. Appeals Court
TYPEWRITER

Nevada Dept. of Corrections v. *Greene*, 648 F.3d 1014 (9th Cir. 2011). The Nevada Department of Corrections brought an action against an inmate, seeking declaratory judgment that its ban on personal possession of typewriters by inmates was constitutional. Following intervention by additional inmates, the district court granted the Department's motion for summary judgment. Several inmates appealed, and the appeals were consolidated. The appeals court affirmed. The appeals court held that: (1) the typewriter ban did not constitute First Amendment retaliation; (2) the ban did not infringe upon the inmates' First Amendment right of access to the Nevada Supreme Court; (3) the ban did not infringe upon the inmates' Fourteenth Amendment due process rights; and (4) the district court did not abuse its discretion in not affording the inmate the opportunity to conduct discovery prior to its ruling on the Department's motion for summary judgment. The court noted that the Department's ban on personal possession of typewriters by inmates reasonably advanced a legitimate correctional goal of institutional safety, and that the ban was enacted after the murder of an inmate with a weapon fashioned from the roller pin of a typewriter. (Nevada Department of Corrections)

U.S. District Court
EVIDENCE
EXHAUSTION
PLRA- Prison Litigation Reform Act
TRANSFER

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. (Adams County Jail, Idaho)

U.S. District Court
LAW LIBRARY

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. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
EVIDENCE
INTERROGATION

Tillman v. *Burge*, 813 F.Supp.2d 946 (N.D.Ill. 2011). A former prisoner, who served nearly 24 years in prison for rape and murder before his conviction was vacated and charges were dismissed, brought a § 1983 action against a city, county, police officers, police supervisors, and prosecutors, as well as a former mayor, alleging deprivation of a fair trial, wrongful conviction, a Monell claim, conspiracy under § 1985 and § 1986, and various state law claims. The defendants filed separate motions to dismiss. The district court granted the motions in part and denied in part. The court held that the former prisoner's allegations that police officers engaged in suppressing, destroying, and preventing discovery of exculpatory evidence, including instruments of torture used to coerce the prisoner's confession, stated a § 1983 claim against the police officers for a Brady violation, despite the officers' contention that the prisoner was aware of everything that he claimed was withheld at the time of the trial. The court found that the former prisoner's complaint, alleging that municipal officials acted in collusion with a former mayor and a state's attorney and high-ranking police officials to deflect public scrutiny of the actions of police officers that suppressed and prevented

discovery of exculpatory evidence, which prolonged prisoner's incarceration, stated a § 1983 claim against municipal officials for deprivation of fair trial and wrongful conviction.

According to the court, a prosecutor was not entitled to absolute immunity from the § 1983 complaint by the former prisoner, alleging that the prosecutor personally participated in the prisoner's interrogation and that of a codefendant, and then suppressed the truth concerning those events. The court found that the allegation put the prosecutor's conduct outside the scope of his prosecutorial function. The court held that the complaint by the former prisoner, alleging that the former prosecutor encouraged, condoned, and permitted the use of torture against the prisoner in order to secure a confession, stated a § 1983 claim against the prosecutor for coercive interrogation, in violation of the Fifth and Fourteenth Amendments. The court noted that the allegations supported the inference that the prosecutor participated in an investigatory rather than a prosecutorial role.

According to the court, the "Plaintiff's 46–page complaint sets forth an account of the murder of Betty Howard and Plaintiff's arrest and prosecution for that murder, including the torture he alleges he endured at the hands of Area 2 police officers. The complaint also details the history of torture at Area 2 and the alleged involvement of the various Defendants in that torture and in subsequent efforts to cover it up." (Cook County, Illinois)

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

Troy D. v. *Mickens*, 806 F.Supp.2d 758 (D.N.J. 2011). Two juvenile delinquents brought a § 1983 action against mental health providers and the New Jersey Juvenile Justice Commission (JJC), alleging that the actions of the defendants while the delinquents were in custody violated the Fourteenth Amendment and New Jersey law. One of the plaintiffs was 15 years old when he was adjudicated as delinquent and remained in custody for a total of 225 days. For approximately 178 of those days, the delinquent was held in isolation under a special observation status requiring close or constant watch, purportedly for his own safety. Although the delinquents were placed in isolation for different reasons, the conditions they experienced were similar. Each was confined to a seven-foot-by-seven-foot room and allowed out only for hygiene purposes. The rooms contained only a concrete bed slab, a toilet, a sink, and a mattress pad. One delinquent was allegedly held in extreme cold, and the other was allegedly isolated for four days in extreme heat. Both were denied any educational materials or programming, and were prevented from interacting with their peers. One delinquent's mattress pad was often removed, a light remained on for 24 hours a day, and he was often required to wear a bulky, sleeveless smock. Both delinquents were allegedly denied mental health treatment during their periods in isolation. The defendants filed a motion for summary judgment. The district court denied the motion. The court held that there was no evidence that a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities was educated about filing a form with a social worker as the procedure for filing an administrative grievance, as required for the procedure to be available to the delinquent to exhaust his § 1983 claims against JJC and mental health providers. The court also found that there was no evidence the New Jersey Juvenile Justice Commission (JJC) provided written notice to the juvenile delinquent housed at JJC facilities of the opportunity to appeal their disciplinary sanctions, which would have triggered the requirement that he appeal each sanction within 48 hours of notice, as required to exhaust administrative remedies. (New Jersey Juvenile Justice Commission, Juvenile Medium Security Facility, New Jersey Training School, Juvenile Reception and Assessment Center)

U.S. Appeals Court
SPEEDY TRIAL

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)

2012

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

Akhtar v. *Mesa*, 698 F.3d 1202 (9th Cir. 2012). A state prisoner brought a § 1983 action against correctional officers, alleging deliberate indifference to his serious medical needs in connection with the officers' alleged failure to comply with the prisoner's medical orders, which required the prisoner to be housed in a ground floor cell. The district court dismissed the action and denied the prisoner's motion to alter or amend the judgment. The prisoner appealed. The appeals court affirmed and remanded. The court held that the district court abused its discretion by failing to consider arguments that directed the court to crucial facts showing he might have exhausted his administrative remedies, and in addition to being pro se, the prisoner was illiterate, disabled, and had limited English skills. The court found that the prisoner satisfied the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) prior to filing his § 1983 action against the correctional officers, where the prisoner filed grievances addressing the officers' alleged failure to comply with medical orders several months before filing the complaint. (Mule Creek State Prison, California)

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

Albino v. *Baca*, 697 F.3d 1023 (9th Cir. 2012). A detainee in a county jail brought a § 1983 action against a sheriff, alleging failure to protect him against other inmates, deliberate indifference to his serious medical needs, failure to adequately train and supervise deputies, intentional infliction of emotional distress, and gross negligence. The district court granted summary judgment for the sheriff. The detainee appealed. The

appeals court affirmed. The appeals court held that: (1) the sheriff, in asserting the detainee's failure to exhaust administrative remedies, met his burden of showing that a grievance procedure existed and was not followed; (2) jail officials did not affirmatively interfere with the detainee's ability to exhaust administrative remedies, as would provide a basis for excusing failure to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA); and (3) the detainee failed to show that jail's grievance procedure was effectively unavailable to him, due to his lack of awareness of the grievance procedure. (Los Angeles County Sheriff's Department's, Main Jail, California)

U.S. District Court
LEGAL MAIL

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
LAW LIBRARY

Burd v. *Sessler*, 702 F.3d 429 (7th Cir. 2012). A state prisoner brought a § 1983 action against prison officials, alleging that they deprived him of access to the courts by preventing him from using library resources to prepare a motion to withdraw his guilty plea. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the claim was barred by *Heck v. Humphrey*. The court noted that such a claim for damages would require the prisoner to show that the deprivation of access hindered his efforts to successfully withdraw his guilty plea, which would necessarily implicate the validity of the prisoner's conviction that he incurred on account of that guilty plea. The court noted that even if the prisoner was no longer in custody at the time of his § 1983 suit, he could have pursued federal habeas relief while in custody, but failed to do so. Under Illinois practice, the prisoner had thirty days to file a motion to withdraw his guilty plea, but for the first twenty-nine days of this period, he was held at prison facilities that lacked library resources of any kind. (Sheridan Correctional Center, Illinois)

U.S. District Court
DUE PROCESS
LEGAL MATERIAL

Catanzaro v. *Harry*, 848 F.Supp.2d 780 (W.D.Mich. 2012). A state prisoner, proceeding pro se, brought a § 1983 action against a state department of corrections, department officials, a warden, parole board members, and numerous prison and department employees, alleging violation of his due process rights, violation of the Fourth Amendment, denial of adequate medical care, his right to free exercise of religion, equal protection, access to courts, and retaliation. The district court held that: (1) the prisoner had no protected interest in early release on parole; (2) the requirement that the prisoner complete a sex-offender treatment program as condition for parole did not violate the Due Process Clause as the condition for parole did not exceed the sentence imposed on the prisoner; (3) the prisoner's conditions at sex-offender treatment facility did not implicate the prisoner's right to procedural due process, notwithstanding the fact that the prisoner did not have access to recreational facilities or a law library, the prisoner could not work, the prisoner had to arrange for his own health care, and the prisoner did not have the opportunity to attend religious services; (4) the transfer of the prisoner to facility for sex-offender treatment program did not violate his right to substantive due process; and (5) the prisoner stated a claim for violation of Free Exercise Clause. According to the court, the prisoner's complaint, alleging that a parole agent prevented him from bringing his own legal papers with him during his transfer from a sex-offender treatment facility to a prison, and that as a result, the prisoner was unable to notify the court of his address change and a lost opportunity to object to dismissal of two retaliation claims, failed to state a claim for violation of prisoner's right of access to the courts. (Cooper Street Correctional Facility, Residential Sex Offender Program (RSOP) at the Kalamazoo, and Probation Enhancement Program in Muskegon, Michigan)

U.S. District Court
LEGAL MAIL

Galeas v. *Inpold*, 845 F.Supp.2d 685 (W.D.N.C. 2012). An inmate, proceeding pro se, brought a § 1983 action against a mailroom officer, alleging mishandling of his legal mail. The district court granted the officer's motion to dismiss. The court held that the inmate's allegations that his mother sent him two packages by certified mail containing his legal papers, that the mailroom officer signed the receipt, and that the inmate never received the packages were insufficient to plead intentional interference by the officer, as required to state a § 1983 claim for denial of access to the courts in violation of the Fourteenth Amendment. The court also held that the allegations were insufficient to plead an actual injury, as required to state a § 1983 claim against the mailroom officer for denial of access to the courts, absent allegations as to the contents of those papers or of the legal to issue to which they were vital. (Lanesboro Correctional Institution, North Carolina)

U.S. District Court
POSTAGE
INDIGENT INMATES

Gaskins v. *Dickhaut*, 881 F.Supp.2d 223 (D.Mass. 2012). A state prisoner brought a § 1983 action against a prison's superintendent and treasurer, alleging the defendants violated his constitutional right of access to courts under the Fourteenth Amendment. The prisoner challenged a Massachusetts Department of Corrections' (DOC) regulation that determined that an inmate was not indigent, and thus ineligible for free postage, if he had more than $10 in his prison account during 60-day period. The defendants moved to dismiss and the district court allowed the motion. The court held that the inmate failed to allege that the policy prevented him from pursuing a legal claim or caused him to suffer an actual injury, as required to state a § 1983 claim against prison officials for denial of access to courts under Fourteenth Amendment, where his complaint lacked such allegations. (Massachusetts Department of Corrections, Souza Baranowski Correctional Center)

U.S. Appeals Court
COURT COSTS
RETALIATION

Gay v. *Chandra*, 682 F.3d 590 (7th Cir. 2012). A prisoner sued three mental health professionals at the prison alleging constitutionally inadequate treatment and retaliation for a prior lawsuit. The district court required the cost bond without evaluating the merit or lack of merit of the prisoner's claims, and then dismissed the case with prejudice when prisoner did not post the bond he could not afford, and the prisoner appealed. The appeals court reversed and remanded. The court held that the district court abused its discretion in failing to consider the prisoner's current ability to afford a bond before requiring one as a condition of prosecuting a civil rights lawsuit. The court noted that a court's authority to award costs to a prevailing party implies a power to require the posting of a bond reasonably calculated to cover those costs, even though no statute or rule expressly authorizes such an order. The court may require a bond where there is reason to believe that the prevailing party will find it difficult to collect its costs when the litigation ends. The appeals court described the plaintiff as a "deeply disturbed Illinois inmate with a long history of self-mutilation." (Tamms Correctional Center, Illinois)

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

Gibson v. *City Municipality of New York*, 692 F.3d 198 (2nd Cir. 2012). A detainee in the custody of a state's mental health commissioner filed a civil rights action against city officials. The district court dismissed the complaint, and the detainee appealed. The appeals court affirmed. The appeals court held that the detainee was a "prisoner" within the meaning of the Prison Litigation Reform Act (PLRA). According to the court, a detainee in the custody of the state's mental health commissioner pursuant to a temporary order of observation was a "prisoner" within the meaning of PLRA, and thus could not proceed in forma pauperis in a civil rights action against city officials because of his previous frivolous filings, where the criminal proceedings against the detainee were merely suspended during his confinement and observation, and would only terminate if he was still being held at the time a temporary order expired or the criminal charges at issue were otherwise dropped. (Kirby Forensic Psychiatric Facility, New York)

U.S. Appeals Court
EXHAUSTION
FILING FEES
PLRA- Prison Litigation Reform Act

Gonzalez v. *Seal*, 702 F.3d 785 (5th Cir. 2012). A state prisoner, proceeding pro se and in forma pauperis, brought a § 1983 action against employees of a department of corrections (DOC), alleging harassment, excessive force, denial of medical care, denial of due process, and assault and battery. After denying the employees' motion for summary judgment, the district court denied the employees' motion for reconsideration. The employees appealed. The appeals court reversed and remanded, finding that the district court did not have the discretion to waive the pre-filing requirement of exhausting administrative remedies under the Prison Litigation Reform Act (PLRA). The court noted that the prisoner exhausted administrative remedies after his lawsuit was underway, but PLRA required exhaustion to occur prior to filing. (Louisiana Department of Corrections)

U.S. Appeals Court
APPOINTED ATTORNEY

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
APPOINTED ATTORNEY
IN FORMA PAUPERIS

Hartmann v. *Carroll*, 882 F.Supp.2d 742 (D.Del. 2012). A state prisoner brought a § 1983 action, proceeding pro se and in forma pauperis, against a warden, deputy warden, and an employee of the medical healthcare contractor for the Delaware Department of Correction (DOC). The prisoner alleged deliberate indifference to his medical needs. The prisoner requested counsel, and the employee moved to dismiss. The district court denied the request for counsel and denied the motion to dismiss. The court held that evidence did not support the conclusion that the prisoner was incompetent, where the prisoner had actively participated in the litigation, and he had been able to represent himself in court. (Sussex Correctional Institution, Delaware)

U.S. District Court
LEGAL MAIL

Hill v. *Terrell*, 846 F.Supp.2d 488 (W.D.N.C. 2012). A state prisoner, proceeding pro se, brought an action against a department of correction (DOC) and prison officials, alleging denial of access to the courts. The district court granted the defendants motion for judgment on the pleadings. The court held that the prison's censorship of the prisoner's outgoing mail did not violate his First Amendment rights, where two individuals contacted the prison with notice that they did not wish to be contacted by the prisoner, the prison policy permitted withdrawal of the prisoner's privilege to write to a particular person upon request by that person, and the prisoner was informed that letters would be censored to those people. According to the court, the prisoner's allegations that prison staff censored his legal mail, preventing him from communicating adequately or confidentially with his attorneys, were insufficient to state a § 1983 claim for denial of access to the courts in violation of the First Amendment, absent allegations of any specific instances where his legal mail was censored or of an actual injury from the censorship. (Marion Correctional Inst., North Carolina)

U.S. Appeals Court
DUE PROCESS
SPEEDY TRIAL

Holloway v. *Delaware County Sheriff*, 700 F.3d 1063 (7th Cir. 2012). An arrestee brought a § 1983 action, alleging that a sheriff, who was sued in his official capacity, violated his rights by detaining him without charges for nine days, The district court granted summary judgment for the sheriff and the arrestee appealed. The appeals court affirmed. The appeals court held that the sheriff did not violate the substantive due process

rights of the arrestee, where the sheriff brought the arrestee before court for an initial hearing within 72 hours of his arrest, followed the court's order in holding the arrestee without bond, and released the arrestee promptly, within 72 hours of the initial hearing, excluding intervening weekend days, when the prosecutor did not file charges within the time permitted by the court. (Delaware County Jail, Wisconsin)

U.S. District Court
ACCESS TO COUNSEL
ACCESS TO COURTS

In re Guantanamo Bay Detainee Continued Access to Counsel, 892 F.Supp.2d 8 (D.D.C. 2012). In habeas proceedings challenging aliens' detentions at the U.S. Naval Facility at Guantanamo Bay, Cuba, four detainees moved individually to dismiss their habeas petitions without prejudice, conditioned on their continued access to counsel under the protective order previously created to assure such rights. Counsel for two other detainees, who were denied access to their counsel following the denial of their habeas petitions, moved for an order affirming that the protective order continued to apply to them. The district court consolidated the motions and held that the protective order continued to govern access to counsel issues for all detainees who had a right to petition for habeas relief. (U.S. Naval Facility at Guantanamo Bay, Cuba)

U.S. District Court
EXPERT WITNESS

Jones v. *Pramstaller*, 874 F.Supp.2d 713 (W.D.Mich. 2012). The estate of a prisoner who died of viral meningoencephalitis brought an action under § 1983 against a doctor who provided the prisoner with medical care under contract with the contractor that provided health care to state prisoners. The doctor moved for disqualification of the estate's expert witness. The district court granted the motion. The court held that the estate failed to show that the expert witness' testimony was based on common sense rather than expertise and experience, and the estate failed to show that the expert witness's opinion was based on reliable principles and methods. The proposed expert witness, a physician, believed that the doctor's unreasonable delay in having the prisoner hospitalized was probably a cause of the prisoner's death. (Ernest Brooks Facility, Michigan Department of Corrections)

U.S. District Court
LEGAL MATERIAL

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 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
EVIDENCE

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. District Court
PLRA- Prison Litigation Reform Act
RETALIATION
EXHAUSTION
DUE PROCESS

Patel v. *Moron*, 897 F.Supp.2d 389 (E.D.N.C. 2012). A federal prisoner brought a *Bivens* action against prison officials, alleging, among other things, deliberate indifference to his medical needs in violation of the Eighth Amendment, violation of due process, retaliation in violation of the First Amendment, and denial of access to courts. The defendants moved to dismiss for failure to state a claim and for a protective order and stay, and the prisoner moved for a temporary restraining order, for a continuance to permit discovery, and to strike portions of the defendants' motion to dismiss. The district court held that: (1) the prisoner was not responsible for failure to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA); and (2) the prisoner's allegations were sufficient to state an Eighth Amendment deliberate indifference claim. (Federal Correctional Center in Butner, North Carolina, and Rivers Corr'l Institution, operated by the GEO Group, Inc)

U.S. Appeals Court
APPOINTED ATTORNEY

Powell v. *Symons*, 680 F.3d 301 (3rd Cir. 2012). A state prisoner filed a § 1983 action asserting Eighth Amendment claim that a physician was deliberately indifferent to his medical needs. The district court granted summary judgment for the defendant and the prisoner appealed. Another prisoner filed a similar claim and the district court granted summary judgment for defendants and that prisoner appealed. The appeals were consolidated. The appeals court reversed and remanded, finding that the district court abused its discretion as to one prisoner in not entering an order appointing an appropriate representative under the guardian ad litem rule, and that a letter from a physician as to the other prisoner sufficed to put the district court on notice that the prisoner possibly was incompetent. The court noted that the letter from the physician stated that the prisoner "is under my care for Major Depression and Attention Deficit Disorder. I do not feel he is competent at this time to represent himself in court. I would recommend that he be given a public defender, if at all possible." (SCI–Rockview, Pennsylvania)

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

Rahim v. *Holden*, 882 F.Supp.2d 638 (D.Del. 2012). A state prisoner, proceeding pro se and in forma pauperis, brought an action against prison officials, alleging violations of his due process rights related to his parole. The officials moved for dismissal. The district court denied the motion. The court held that a grievance procedure was unavailable to the state prisoner with regard to claims against prison officials as to alleged Fourteenth Amendment due process violations related to his parole, and therefore, the prisoner was excused from the Prison Litigation Reform Act (PLRA) requirement to exhaust administrative remedies. The prisoner was denied parole, which he believed was for arbitrary and constitutionally impermissible reasons, but instructions for filing a grievance specifically stated that parole decisions were non-grievable. The court noted that another form indicated he could appeal a parole decision to the Board of Parole by writing a letter to the Board, and he wrote letters to Board. (James T. Vaughn Correctional Center, Delaware)

U.S. Appeals Court
STATUTE OF LIMITATIONS
42 U.S.C.A. Sec. 1983

Richards v. *Mitcheff*, 696 F.3d 635 (7th Cir. 2012). A state prisoner brought a § 1983 action against a prison doctor, alleging that a delay in treatment violated the Eighth Amendment. The district court granted the doctor's motion to dismiss and the prisoner appealed. The appeals court reversed and remanded, finding that the allegations were sufficient to plead incapacitation. According to the court, the prisoner's allegations that he had several surgeries that disabled him, that he was in constant pain and unable to walk when out of a hospital, and that he filed suit as soon as he could muster concentration and energy to do so, were sufficient to plead incapacitation, as required to toll the limitations period under Indiana law for the prisoner's § 1983 claim against the prison doctor for violations of the Eighth Amendment. (Pendleton Corr'l. Facility, Indiana)

U.S. District Court
POSTAGE
RETALIATION FOR LEGAL ACTION
WRITING MATERIAL

Ripp v. *Nickel*, 838 F.Supp.2d 861 (W.D.Wis. 2012). A prisoner brought an action against a prison warden and other prison administrators claiming he was disciplined for threatening to file a lawsuit. The prisoner moved to compel the warden to provide writing materials and postage. The district court granted the motion, finding that the prisoner's right to have meaningful access to courts was violated when the warden refused to provide postage to the prisoner, who had no money in his inmate trust fund account to purchase his own postage, so that he could mail his summary judgment material to the court to pursue his claim that he was disciplined for threatening to file a lawsuit. According to the court, the prisoner would suffer an actual injury without the warden's assistance since he would be unable to file his summary judgment materials or otherwise continue litigating his case, and the prisoner's claim was not frivolous. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
SELF INCRIMINATION

Roman v. *DiGuglielmo*, 675 F.3d 204 (3rd Cir. 2012). A state prisoner petitioned for a writ of habeas corpus, after a state court denied habeas relief, alleging that state's decision to deny him parole, unless he admitted his guilt and participated in sex offender treatment program, violated his Fifth Amendment right against self incrimination. The district court denied the petition and the prisoner appealed. The court held that the parole condition did not violate the prisoner's right against self incrimination. The court noted that the state had a legitimate interest in rehabilitating prisoners, the prisoner did not have any right or entitlement to parole under state law, his sentence was not lengthened, and the actual conditions of his imprisonment had not been altered. (Pennsylvania)

U.S. District Court
APPOINTED ATTORNEY
TRANSFER

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
EVIDENCE
EXPERT WITNESS

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 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
EXHAUSTION
LEGAL MATERIAL
RETALIATION
TRANSFER

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 Dept. of Corrections, Gus Harrison Correctional Facility)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
LEGAL ASSISTANCE

U.S. v. *Maricopa County, Ariz*., 915 F.Supp.2d 1073 (D.Ariz. 2012). The United States filed an action against a county, the county sheriff's office, and the sheriff in his official capacity, relating to treatment of Latinos, including jail detainees, and asserting claims for violations of the Fourth Amendment, retaliation in violation of the First Amendment, violations of equal protection and due process, and discrimination on the basis of race, color, or national origin in violation of Title VI and the Violent Crime Control and Law Enforcement Act. The defendants filed motions to dismiss. The district court denied the county's motion, and granted the sheriff and sheriff's office motions in part and denied in part. The court held that the sheriff's office was an entity that was not capable of being sued in its own name. The court found that allegations that the county sheriff's office and the sheriff conducted jail operations in English and provided inadequate language assistance to the large jail population of Latino inmates who were limited English proficient (LEP) individuals, thereby denying the Latino LEP inmates meaningful access to jail programs such as sanitary needs, food, clothing, legal information, and religious services, stated a claim for disparate impact discrimination under Title VI by programs or activities receiving federal financial assistance. (Maricopa County Sheriff's Office, Sheriff Joseph M. Arpaio, Arizona)

U.S. District Court
EVIDENCE
TELEPHONE

U.S. v. *Salyer*, 853 F.Supp.2d 1014 (E.D.Cal. 2012). A defendant in a criminal prosecution moved to suppress recordings of telephone calls he made while in pretrial detention, and the government moved for an order permitting it to listen to and use the recordings. The district court granted the motions in part and denied in part. The court held that most of the recorded conversations were not covered by attorney-client privilege, and conversations in which legal advice was the predominate purpose were covered by the attorney-client privilege. The court noted that attorney-client communication was not the predominate purpose of telephone conversations between defendant and attorney who was a friend and who did not represent him in the criminal case. (Sacramento County Jail, California)

U.S. Appeals Court
EVALUATION
EVIDENCE

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
LAW LIBRARY
RIGHT TO COUNSEL

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. (U. S. District Court, Iowa)

U.S. District Court
COMPUTERS
LEGAL MATERIAL
RETALIATION FOR
LEGAL ACTION

Vogelfang v. *Capra*, 889 F.Supp.2d 489 (S.D.N.Y. 2012). A female state inmate filed a pro se § 1983 action against a prison's correction officers, officials, and medical staff, asserting 25 claims contesting the conditions of her confinement and the conduct of the staff. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate's complaint stated due process claims based on insufficient notice of a disciplinary hearing and on the inmate's allegedly improper removal from a disciplinary hearing. According to the court, the pro se state inmate's allegations that she was denied access to a computer failed to state a claim against prison officials for due process violations absent allegations that such denial constituted an atypical and significant hardship to her. Although the inmate claimed

that it was impossible for her to perform legal work because courts no longer accepted hand-written documents, the court did not prohibit hand-written documents and had accepted them on prior motions in the inmate's case. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
ACCESS TO ATTORNEY
TELEPHONE
SPEEDY TRIAL

Waganfeald v. *Gusman*, 674 F.3d 475 (5th Cir. 2012). Pre-trial detainees who had been arrested for public intoxication and were incarcerated in New Orleans when Hurricane Katrina struck the city brought a § 1983 action against a sheriff, chief deputy, and others, alleging claims for violations of their Fourth, Sixth, and Eighth Amendment rights, as well as claims for false imprisonment under Louisiana law. A jury trial was held. After denying the defendants' motions for judgment as a matter of law, the district court entered judgment on the jury verdict for the plaintiffs on some of the claims, and denied the defendants' post-verdict motions for judgment as a matter of law or, alternatively, for a new trial. The defendants appealed. The appeals court reversed, vacated, and remanded with instructions. The appeals court held that under Louisiana law, the sheriff's actions fell within the emergency exception to the 48-hour rule, and so the plaintiffs' detention was not "unlawful," as required to establish their claim of false imprisonment, despite the sheriff's failure to release them when they were not granted a probable cause determination within 48 hours after their arrest. The court found that, even if the plaintiffs had a Sixth Amendment right to counsel during the period in question, the chief deputy did not act in an objectively unreasonable manner in light of clearly established law when, after the prison's land-line telephones became inoperable, he refused to let the plaintiffs use their cell phones to call an attorney. (Orleans Parish Criminal Sheriff, Louisiana)

U.S. Appeals Court
IN FORMA PAUPERIS
RETALIATION

Watison v. *Carter*, 668 F.3d 1108 (9th Cir. 2012). A state inmate brought a pro se § 1983 action against prison officials, alleging violations of his federal constitutional rights and Nevada laws. The district court dismissed the complaint with prejudice pursuant to the in forma pauperis (IFP) statute, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded with instructions. The court held that the humiliation that the state inmate suffered during an alleged incident did not rise to the level of severe psychological pain as required to state an Eighth Amendment claim. The inmate alleged that a correctional officer entered the inmate's cell while the inmate was on the toilet and, while the inmate was still on the toilet, rubbed his thigh against inmate's thigh and smiled in sexual manner, then left the cell laughing, The court found that the inmate sufficiently alleged a First Amendment retaliation claim against a correctional officer and an associate warden by alleging that he engaged in protected conduct by filing grievances against the officer and alleging: (1) that the officer and the associate warden took adverse actions against him, including filing of a false disciplinary charge against him, placing him in administrative segregation, and telling lies that resulted in denial of his parole, and (2) that such adverse actions were taken shortly after, and in retaliation for, the filing of grievances, and that the adverse actions, which involved more than minimal harms, had no legitimate penological reason. The court held that the inmate sufficiently alleged a First Amendment retaliation claim against a correctional officer by asserting that he had filed grievances against the officer, who allegedly refused to give him his breakfast, that the officer mentioned grievances during same interaction in which the officer refused to give the inmate his breakfast, that the officer's conduct was retaliatory, and that the inmate also asked during the same interaction to file an additional grievance about the denial of breakfast. (Nevada State Prison)

U.S. District Court
EXPERT WITNESS

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
ACCESS TO COUNSEL
DUE PROCESS

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. (Colorado Department of Corrections)

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

Aref v. *Holder*, 953 F.Supp.2d 133 (D.D.C. 2013). Current and former prisoners brought an action against the Bureau of Prisons (BOP), BOP officials, and the Attorney General, claiming that their First and Fifth Amendment rights were violated when they were placed in Communications Management Units (CMUs), in which their ability to communicate with the outside world was seriously restricted. Following dismissal of all but the procedural due process and First Amendment retaliation claims, the defendants moved to dismiss the First Amendment claims. The district court granted the motion in part and denied in part. The court held that: (1) the prisoner's release from BOP custody rendered moot his official-capacity claims for equitable relief; (2) a second prisoner sufficiently alleged a First Amendment retaliation claim; but (3) the Prison Litigation Reform Act (PLRA) barred the prisoners' individual-capacity claims against a BOP official for mental or emotional injury. (Federal Correctional Institutions in Terre Haute, Indiana, and Marion, Illinois)

U.S. District Court
EVIDENCE
EXPERT WITNESS

Barnes v. *District of Columbia*, 924 F.Supp.2d 74 (D.D.C. 2013). Inmates at local jails brought a class action, under § 1983, against the District of Columbia, alleging that their over-detentions violated their Fourth, Fifth, and Eighth Amendment rights. Following certification of the classes, the parties filed pretrial motions to exclude or limit certain evidence from being introduced at the liability trial. The district court granted the motions in part and denied in part. The court held that: (1) records of inmate over-detentions constituted admissible hearsay evidence; (2) evidence of a settlement in a related class action was admissible under the "other purposes" exception of the rule governing admission of settlement evidence; (3) an expert's testimony regarding the total number of over-detentions occurring during particular periods was admissible; and (4) evidence regarding strip searches performed on inmates was not admissible. The District of Columbia attacked the methodology of the expert, but the court noted that the expert had years of experience reviewing inmate jackets and other data to determine whether an inmate was over-detained, had personally reviewed hundreds of inmate jackets, and had educated himself on the system of collecting inmate data. (District of Columbia Department of Corrections)

U.S. Appeals Court
EVIDENCE

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. (Greene County Jail, Ohio)

U.S. Appeals Court
PLRA- Prison Litigation Reform Act
RETALIATION FOR LEGAL ACTION

Childs v. *Miller*, 713 F.3d 1262 (10th Cir. 2013). A state prisoner brought a § 1983 action alleging prison employees retaliated against him for exercising his federal constitutional right to file administrative grievances about his medical care. The district court dismissed the action for failure to state a claim. The prisoner appealed. The appeals court affirmed. The appeals court held that the defendant had three strikes under the Prison Litigation Reform Act's (PLRA) in forma pauperis provision, and that dismissal of a complaint as repetitive and an abuse of process constituted a strike under the PLRA's in forma pauperis provision. (Lawton Correctional Facility, Oklahoma)

U.S. District Court
EXPERT WITNESS

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. 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. (Woodbury County Jail, Iowa)

U.S. District Court
APPOINTED ATTORNEY
IN FORMA PAUPERIS
LEGAL MATERIAL
LAW LIBRARY

Cox v. *LNU*, 924 F.Supp.2d 1269 (D.Kan. 2013). A state inmate brought a pro se civil rights action in state court. The defendants removed the action to federal court. The inmate moved to secure case law cited in the defendants' court filings and for the appointment of counsel. The district court denied the motions. The court held that: (1) the defendants were not required to furnish copies of unpublished cases that were available through electronic providers; (2) the court would not exercise its discretion to require the defendants to provide copies of published decisions; (3) the inmate's declaration that he was "broke" and had "no money or assets for anything" did not qualify as a motion to proceed in forma pauperis; and (4) even if the inmate qualified for in forma pauperis status, discretionary authority to request appointment of counsel would not be exercised. (Johnson County Jail, Kansas)

U.S. Appeals Court
EVIDENCE
LEGAL MATERIAL
RETALIATION FOR LEGAL ACTION

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
CIVIL SUIT
EVIDENCE

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
DUE PROCESS
LEGAL MAIL
RETALIATION

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; and (3) a First Amendment retaliation claim based on interference with legal mail. (Atlantic County Justice Facility, New Jersey)

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

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
EXPERT WITNESS

Ford-Sholebo v. *U.S.*, 980 F.Supp.2d 917 (N.D.Ill. 2013). The wife of a deceased pretrial detainee who suffered from a seizure disorder, individually and as administrator of the detainee's estate, brought a wrongful death action against the United States pursuant to the Federal Tort Claims Act (FTCA). The district court held that: (1) evidence supported a finding that the detainee had a seizure disorder; (2) correctional facility employees breached the standard of care for treating the detainee's seizure disorder; (3) the employees' failures and breaches of the standard of care proximately caused the detainee's death; and (4) an award of damages to the wife in the amount of $40,000 for the loss of consortium was appropriate. The court noted that the testimony of the administrator's expert physician and a pathologist who was subpoenaed to testify at trial,

that the detainee suffered from a seizure disorder, was overwhelmingly credible, while testimony of the government's two experts, that the detainee did not have seizure disorder, was incredible and unreliable. (Metropolitan Correctional Center, Chicago, and Kankakee County Detention Center, Illinois)

U.S. District Court
INITIAL APPEARANCE
DUE PROCESS

Gordon v. *Johnson*, 991 F.Supp.2d 258 (D.Mass. 2013). An alien, a lawful permanent resident who was subjected to mandatory detention pending removal five years after his arrest for narcotics possession, petitioned for a writ of habeas corpus on his own behalf and on behalf of a class of similarly situated individuals, seeking an individualized bond hearing to challenge his ongoing detention. The government moved to dismiss. The district court allowed the petition, finding that the phrase "when the alien is released" in the statute authorizing mandatory detention of criminal aliens meant "at the time of release," and that the petitioner was entitled to a bond hearing for consideration of the possibility of his release on conditions. (Franklin County Jail and House of Correction, Secretary of the Department of Homeland Security, Sheriff of Bristol County, Sheriff of Plymouth County, Sheriff of Suffolk County, Massachusetts)

U.S. District Court
EXPERT WITNESS

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. Appeals Court
STATUTE OF
LIMITATIONS

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. District Court
SEARCHES
EQUAL PROTECTION

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
APPOINTED ATTORNEY

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
PLRA- Prison Litigation Reform Act
RETALIATION
IN FORMA PAUPERIS
FRIVOLOUS SUITS

Knapp v. *Hogan,* 738 F.3d 1106 (9th Cir. 2013). A state prisoner filed a § 1983 action against a warden and other state officials, claiming retaliation for the website of the prisoner's mother that allegedly exposed prison corruption and fought for prisoners' rights. The district court granted the officials summary judgment. The prisoner appealed, and the officials moved to dismiss on the ground that the prisoner was disqualified from proceeding in forma pauperis under the Prison Litigation Reform Act (PLRA). The appeals court held that, in a matter of first impression, repeated knowing violations of the notice pleading rule are strikes under PLRA, and the prisoner was disqualified from proceeding in forma pauperis. The court noted that the prisoner's two prior appeals that were dismissed as frivolous for lack of good faith counted as strikes, and his three prior complaints that violated the notice pleading rule's short and plain statement requirement counted as strikes for failure to state a claim, as he was given leave to amend but failed to correct the violations after repeated warnings by the district court. (Mule Creek State Prison, California)

U.S. District Court
ADA- Americans with Disabilities Act
DUE PROCESS
LAW LIBRARY
LEGAL MATERIALS
TYPEWRITER

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 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
APPOINTED ATTORNEY
EVALUATION
IN FORMA PAUPERIS

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
DUE PROCESS
TELEPHONE
WRITING MATERIAL

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 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
IN FORMA PAUPERIS
LAW LIBRARY
PRO SE LITIGATION

Parkell v. *Morgan*, 917 F.Supp.2d 328 (D.Del. 2013). A pretrial detainee, proceeding pro se and in forma pauperis, brought a § 1983 action against a medical provider and various officials, alleging violations of the Fourteenth Amendment. The defendants moved to dismiss. The district court found that the detainee's allegations that he did not have adequate law library access were insufficient to state a § 1983 claim for violation of the First Amendment right of access to the courts, where the detainee alleged he was provided access to a law library, just not type he desired. The court held that the detainee's allegations that he adhered to a mystic

branch of Wicca and that the prison offered limited selection of diets to satisfy his religious needs were sufficient to state a § 1983 claim for violation of his First Amendment religious rights. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
INITIAL APPEARANCE

Poche v. *Gautreaux*, 973 F.Supp.2d 658 (M.D.La. 2013). A pretrial detainee brought an action against a district attorney and prison officials, among others, alleging various constitutional violations pursuant to § 1983, statutory violations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), as well as state law claims, all related to her alleged unlawful detention for seven months. The district attorney and prison officials moved to dismiss. The district court granted the motions in part and denied in part. The court held that the detainee sufficiently alleged an official policy or custom, as required to establish local government liability for constitutional torts, by alleging that failures of the district attorney and the prison officials to implement policies designed to prevent the constitutional deprivations alleged, and to adequately train their employees in such tasks as processing paperwork related to detention, created such obvious dangers of constitutional violations that the district attorney and the prison officials could all be reasonably said to have acted with conscious indifference. The court found that the pretrial detainee stated a procedural due process claim against the district attorney and the prison officials under § 1983 related to her alleged unlawful detention for seven months, by alleging that it was official policy and custom of the officials to skirt constitutional requirements related to procedures for: (1) establishing probable cause to detain; (2) arraignment; (3) bail; and (4) appointment of counsel, and that the officials' policy and custom resulted in a deprivation of her liberty without due process.

The court also found a procedural due process claim against the district attorney under § 1983 by the detainee's allegation that it was the district attorney's policy and custom to sign charging papers such as bills of information without reading them, without checking their correctness, and without even knowing what he was signing, and that the attorney's policy and custom resulted in a deprivation of her liberty without due process. The court found a substantive due process claim against the district attorney in the detainee's allegation that after obtaining clear direct knowledge that the detainee was being wrongfully and illegally held, the district attorney still failed to correct the mistakes that caused the detention, and to cover up his failures in connection with the case, the district attorney made a conscious decision to bring belated charges against the detainee. The court held that the detainee stated an equal protection claim against the prison officials under § 1983, by alleging that the officials acted with a discriminatory animus toward her because she was mentally disabled, and that she was repeatedly and deliberately punished for, and discriminated against, on that basis. (East Baton Rouge Prison, Louisiana)

U.S. District Court
LAW LIBRARY
LEGAL MAIL
ADA- Americans with Disabilities Act
DUE PROCESS

Randolph v. *Wetzel*, 987 F.Supp.2d 605 (E.D.Pa. 2013). A state inmate brought an action against public officials employed by the Commonwealth of Pennsylvania and prison medical providers, alleging, among other things, that the defendants violated the Americans with Disabilities Act (ADA) and provided inadequate medical treatment. The defendants moved for summary judgment, and the inmate cross-moved for partial summary judgment. The district court granted the defendants' motions in part and denied in part, and denied the inmate's motion. The district court held that state prison officials were not deliberately indifferent to the inmate's allegedly serious medical condition, in violation of the Eighth Amendment, in requiring the inmate to use a wheelchair to access outdoors for "yard time" or to see visitors, rather than transporting the inmate on a gurney. The court noted that the officials relied on the medical providers' judgment that the inmate was able to sit up and get into a wheelchair.According to the court, the inmate's absence at his misconduct hearings, allegedly due to his injuries, and his subsequent sentence of 540 days of disciplinary custody, did not violate his procedural due process rights, where the inmate received both advanced written notice of the claimed violation and a written statement of the fact finders as to the evidence relied upon in reaching their decision. The court found that the inmate's alleged restricted access to his personal effects and legal mail when he was moved between cells, and his alleged denial of access to a law library, did not result in an actual injury to inmate, thus precluding his § 1983 access to courts claim. The court noted that the inmate proceeded with all of his legal claims in addition to his complaint of denial of access to courts. (SCI Graterford, SCI Greene, Pennsylvania)

U.S. District Court
EVIDENCE
RECORDS

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. (Cumberland County Department of Corrections, New Jersey)

U.S. District Court
APPOINTED ATTORNEY

Riley v. *Kolitwenzew*, 967 F.Supp.2d 1251 (C.D.Ill. 2013). A pretrial detainee filed a civil rights action alleging that county jail officials were deliberately indifferent to his serious medical need. The district court dismissed the complaint, and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand, the detainee moved for reconsideration of an order denying recruitment of pro bono counsel to handle his case. The district court denied the motion. According to the court, even if appointment

of counsel might make the detainee more effective in presenting his case, the detainee had demonstrated his ability to competently file motions and participate in litigation, the detainee was knowledgeable, reasonable, and capable of understanding the nature of his allegations, and the detainee's complaint and motions were well written and demonstrated a clear understanding of the issues involved. (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. District Court
LAW LIBRARY
EQUAL PROTECTION

Simmons v. *Adamy*, 987 F.Supp.2d 302 (W.D.N.Y. 2013). A Muslim inmate brought a § 1983 action against Department of Correctional Services (DOCS) officials and a corrections officer, alleging, among other things, that the defendants subjected him to unlawful retaliation. The defendants moved for summary judgment, and inmate cross-moved for summary judgment. The district court granted the defendants' motion. The court held that the alleged actions of prison officials in restricting the law library access of the Muslim inmate after he filed grievances, scheduling his library "call-outs" to conflict with religious celebrations and classes, and filing a false misbehavior report, were not adverse actions that could support the inmate's § 1983 First Amendment retaliation claim. The court noted that there was no evidence that: (1) the inmate was treated differently from other inmates who had not pursued grievances; (2) he was afforded less than reasonable, or less than typical, access to the law library; (3) his free exercise rights were affected in more than a de minimis fashion; or (4) he was unfairly disciplined as a result of the report. The court found that the inmate was not denied reasonable access to a prison law library, thus precluding his denial of access to courts claim under § 1983, where during the year-and-a-half that the inmate was incarcerated at the prison, he was scheduled for more than 100 law library "call-outs" and was granted "special access" to the library on eight different occasions. The court noted that the inmate received more frequent access to the law library during his incarceration than any other inmate, visiting the law library as many as 63 times in seven months. According to the court, the prison's scheduling of the Muslim inmate's law library call-outs to conflict with Muslim classes, services, and observances, did not place a substantial burden on the inmate's ability to practice his religion, and thus did not amount to denial of the inmate's religious freedom under the First Amendment or the Religious Land Use Institutionalized Persons Act (RLUIPA), where the overlap occurred less than 20% of the time. (Attica Correctional Facility, New York)

U.S. District Court
EVIDENCE
WITNESS

Slevin v. *Board of Com'rs for County of Dona Ana*, 934 F.Supp.2d 1282 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. After a verdict in favor of the detainee, the defendants moved for a new trial based on nondisclosure of the existence of attorney-client relationship between the detainee's counsel and a witness, who was a lead plaintiff in other proceedings. The district court denied the motion, finding that failure to volunteer information about their representation of the witness was not fraud, misrepresentation, or misconduct, and did not substantially interfere with the defense. The detainee alleged that, because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in 1violation of the Americans with Disabilities Act. The jury awarded the detainee $3 million in punitive d1amages against the Detention Center Director, and $3.5 million in punitive damages against the facility me1dical director. The jury fixed the amount of compensatory damages at $15.5 million, which included $5010,000 for each month that detainee was incarcerated, plus an additional $1 million for each year since the detainee's release from custody. (Doña Ana County Detention Center, New Mexico)

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

Small v. *Camden County*, 728 F.3d 265 (3rd Cir. 2013). A paraplegic prisoner who was confined to a wheelchair brought a civil rights action against a county correctional facility, approximately thirty individual medical personnel and prison officers, and nine John Does. The district court dismissed the action for failure to exhaust administrative remedies, and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that because prison procedures did not contemplate an appeal from a non-decision, when the prisoner failed to receive even a response to grievances addressing certain incidents, much less a decision as to those grievances, the appeals process was "unavailable" to him for the exhaustion purposes of the Prison Litigation Reform Act (PLRA). (Camden County Correctional Facility, New Jersey)

U.S. District Court
EQUAL PROTECTION
LAW LIBRARY

Tavares v. *Amato*, 954 F.Supp.2d 79 (N.D.N.Y.2013). An inmate who had recently been released from the custody of a county jail filed a pro se suit against a sheriff and jail administrator, claiming his First Amendment rights were violated by his inability to access a law library and to engage in religious worship while confined in involuntary protective custody (IPC). The inmate also alleged that he was discriminated against and placed in IPC because he was a sex offender, in contravention of the Equal Protection Clause, and that his conditions of confinement violated the Eighth Amendment. Both sides moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that there was no evidence of injury, as required to support a claim for violation of the First Amendment's right of access to the courts; According to the court, there was no evidence that the inmate suffered any type of actual injury as a result of receiving only one trip to the facility's law library during his 132-day confinement in involuntary protective custody (IPC). (Montgomery County Jail, New York)

U.S. Appeals Court
IN FORMA PAUPERIS

Vandiver v. *Prison Health Services, Inc*., 727 F.3d 580 (6th Cir. 2013). A prisoner brought a pro se action alleging that the contract prison medical professionals were deliberately indifferent to his health care needs, and applied to proceed in forma pauperis (IFP). The district court denied the IFP application under the "three strikes" rule, and found that the prisoner failed to satisfy pleading requirements for an imminent danger exception. The prisoner appealed. The appeals court reversed and remanded, finding that the prisoner sufficiently alleged an imminent danger of serious physical injury, to satisfy the pleading requirements of the

imminent danger exception. The prisoner alleged that the defendants continued to deny approved specialty care referral visits for his chronic illnesses of diabetes and Hepatitis C, that he faced a risk of coma or death resulting from the denial of physician-prescribed special shoes, a transport vehicle, a special diet and medication, and he had already undergone a partial amputation of his feet. (Prison Health Services, Earnest C. Brooks Correctional Facility, Michigan)

U.S. Appeals Court
ATTENDANCE, COURT

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
TRIAL

Villegas v. *Metropolitan Government of Nashville*, 709 F.3d 563 (6th Cir. 2013). An Immigration detainee filed a § 1983 action against a metropolitan government alleging deliberate indifference to her serious medical needs after she was shackled during the final stages of labor and post-partum recovery. The district court entered judgment in the detainee's favor. A jury awarded the detainee $200,000 in damages. The defendants appealed. The appeals court reversed and remanded. The appeals court held that summary judgment should not have been granted by the district court, where there were genuine issues of material fact as to whether the pregnant immigration detainee presented a flight risk, whether the officers who accompanied her to the hospital when she went into labor were aware of the hospital's no restraint order, and whether the detainee was at risk of physical or psychological harm as a result of being shackled. The appeals court also found genuine issues of material fact as to whether the hospital prescribed a breast pump to allow the detainee to express her breast milk postpartum, and whether a layperson would recognize the need to provide the detainee with a breast pump. The court declined to reassign the case on remand to another district court judge. The court found that reassignment was not warranted, even though the district judge had entered summary judgment in the detainee's favor on her Eighth Amendment claims, and had made critical comments about the government's legal positions and its counsel, where the judge's comments reflected that he was attempting to enforce parameters that he established for trial. The court noted that the judge had made a number of rulings favorable to the government. (Metropolitan Government of Nashville and Davidson County, Davison County Sheriff's Office, Tennessee)

U.S. District Court
ACCESS TO COUNSEL
APPOINTED ATTORNEY
INDIGENT INMATES
INITIAL APPEARANCE
RIGHT TO COUNSEL

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)

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

Wilkins v. *Gaddy*, 734 F.3d 344 (4th Cir. 2013). A state prisoner brought a § 1983 action alleging an officer maliciously and sadistically assaulted him with excessive force in violation of the Eighth Amendment. The prisoner alleged that the officer “lifted and then slammed him to the concrete floor where, once pinned, punched, kicked, kneed, and choked” him until the officer was removed by another member of the corrections staff. After a jury returned a verdict for the prisoner, the district court granted the prisoner's motion for attorneys' fees, but only in the amount of $1. The prisoner appealed. The appeals court affirmed. The court held that the provision of the Prison Litigation Reform Act (PLRA), capping attorneys' fee award at 150% of the value of the prisoner’s monetary judgment, satisfied a rational basis review. The court held that the PLRA provision did not violate the Fifth Amendment's equal protection component by treating the prisoner and non-prisoner litigants differently, where the provision rationally forestalled collateral fee litigation while ensuring that the incentive provided by an attorneys' fee award still attached to the most injurious civil rights violations. (Lanesboro Correctional Institute, North Carolina Department of Public Safety)

U.S. Appeals Court
FRIVOLOUS SUITS
PRO SE LITIGATION
TELECONFERENCE

Williams v. *Wahner*, 731 F.3d 731 (7th Cir. 2013). A pro se state prisoner filed a § 1983 action against state corrections officials, alleging that they willfully failed to prevent other inmates from assaulting him. The district court dismissed the action. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the district court erred in conducting a telephonic merit-review hearing, which included an oral examination of the pro se prisoner, as part of the initial screening for the frivolousness of the prisoner's § 1983 complaint against prison officials for allegedly failing to prevent other inmates from assaulting him. The court found that the district court conducted the hearing to resolve contested factual issues, rather than to clarify the complaint's allegations, and then dismissed the complaint with prejudice for failure to state a claim. (Moultrie County, Illinois)

U.S. Appeals Court
INITIAL APPEARANCE

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 1requisite mental state, as required to support his § 1983 claim against the sheriff, by alleging that: (1) the s1heriff allowed deputies to arrest people and wait before filing charges, thus resulting in the arrest and de1tention of citizens with charges never being filed; (2) the sheriff was deliberately indifferent to ongoing con1stitutional 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 Co. Sheriff's Office, Valencia County Detention Center, New Mexico)

2014

U.S. District Court
LEGAL MAIL

American Civil Liberties Union Fund of Michigan v. *Livingston County*, 23 F.Supp.3d 834 (E.D.Mich. 2014). A civil rights organization brought a § 1983 action against a county and county officials alleging that the jail's postcard-only mail policy violated the First and Fourteenth Amendments. Following the grant of a temporary restraining order (TRO), the organization moved for preliminary injunction. The district court granted the motion. The organization had sought a preliminary injunction enjoining the jail policy of refusing to promptly deliver properly marked legal mail sent by an organization attorney and individually addressed to an inmate. The court held that there was a likelihood of success on the merits of its claim that the policy violated the First Amendment protection accorded inmates' legal mail. The court noted that the organization sent letters in envelopes that were individually addressed to individual inmates, were labeled “legal mail,” clearly delineated that the mail came from an organization attorney, the letters asked if the inmate was interested in meeting with an organization attorney to obtain legal advice regarding the jail policy of limiting all incoming and outgoing mail to one side of a four by six–inch postcard, but the letters were not delivered. The jail opened the letters and read them, and the jail failed to notify the inmates or the organization that the letters were not delivered. (Livingston County Jail, Michigan)

U.S. District Court
LEGAL MATERIAL

Banks v. *Annucci*, 48 F.Supp.3d 394 (N.D.N.Y. 2014). A state inmate filed a § 1983 action alleging that correctional officers harassed him, tampered with his food and contaminated his Kosher meals, interfered with his mail, mishandled his grievances, and interfered with his access to courts, and that prison medical employees were deliberately indifferent to his serious medical needs and involuntarily administered psychotropic drugs to him. The court held that prison officials' alleged unauthorized intentional taking or destruction of the inmate's property did not violate the inmate's due process rights, where the state afforded an adequate post-deprivation remedy. The court noted that the officials did not violate the inmate's First Amendment right of access to courts when they allegedly confiscated a rough draft of his civil rights complaint, where the inmate did not allege that he suffered an actual injury as a result, or that officials acted deliberately or maliciously. (Upstate Correctional Facility, New York)

U.S. District Court
RECORDS
EVIDENCE

Barnes v. *Alves*, 10 F.Supp.3d 391 (W.D.N.Y. 2014). Prison officials moved for reconsideration of a decision by the district court requiring the officials to produce the entire Inspector General report relating to one of the incidents at issue in a state inmate's § 1983 action. The district court denied the motion, finding that good cause existed to require prison officials to pay for the copy of the report they were required to produce to the inmate. (Upstate Correctional Facility in Malone, New York)

U.S. Appeals Court
PLRA- Prison Litigation Reform Act
APPOINTED ATTORNEY
EXHAUSTION

Cano v. *Taylor*, 739 F.3d 1214 (9th Cir. 2014). A former prisoner brought a § 1983 action against prison officials, alleging deliberate indifference to his mental health needs in violation of the Eighth Amendment, and violations of his right to freely exercise his religious beliefs and to have access to the courts, in violation of the First and Fourteenth Amendments. The district court granted summary judgment to the officials on the deliberate indifference claim and dismissed the remaining counts for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act (PLRA). The former prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the inmate's claims for injunctive and declaratory relief arising out of alleged constitutional violations that occurred while in prison were mooted by his release from prison. The court found that there was no evidence that prison mental health care providers were deliberately indifferent to the prisoner's medical needs, as required to support an Eighth Amendment deliberate indifference claim, where the prisoner was seen by mental health care employees regularly for his complaints, and evidence showed that the prisoner's suicide threats were manipulative in nature. The court held that denial of the former prisoner's request for appointment of counsel was not abuse of discretion by the district court, where the prisoner was unlikely to succeed on the merits, and had been able to articulate his legal claims in light of the complexity of the issues involved. According to the appeals court, in deciding whether the former prisoner's § 1983 claims were administratively exhausted pursuant to the Prison Litigation Reform Act (PLRA), the district court should have used the date of the First Amended Complaint, which added the claims, rather than the date of the original complaint. (Arizona Department of Corrections)

U.S. District Court
EXHAUSTION

Cox v. *Massachusetts Dept. of Correction*, 18 F.Supp.3d 38 (D.Mass. 2014). A mentally disabled state prisoner brought an action against a state department of correction (DOC) and various officials, alleging violations of the Eighth and Fourteenth Amendments, Americans with Disabilities Act (ADA), and Massachusetts Declaration of Rights. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the prisoner's grievance alleging he was improperly classified, resulting in a sexual assault, provided the DOC with sufficient notice to investigate, and therefore, the prisoner's claims under the Americans with Disabilities Act (ADA) were administratively exhausted. The prisoner alleged that the DOC did not keep him safe and that he was mentally challenged. According to the court, the prisoner's allegations that he was sexually assaulted by other inmates, that he suffered other abuses, that prison officials knew of the risk of harm to the prisoner, that his history of mental illness was well-documented, and that officials were responsible for policies, procedures, and training that led to his injury were sufficient to state a § 1983 claim against the officials for violations of the Eighth Amendment, and a claim under the Massachusetts Civil Rights Act, absent allegations of threats, intimidation, or coercion by officials. (Massachusetts Department of Correction, Old Colony Correctional Center)

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

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. District Court
EVIDENCE
INVESTIGATION

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
COURT COSTS
FILING FEES

Edmondson v. *Fremgen*, 17 F.Supp.3d 833 (E.D.Wis. 2014). An indigent prisoner brought a § 1983 action against the clerk of the state courts of appeals, alleging that the clerk violated various of his civil rights when she froze his inmate trust accounts until filing fees had been paid in two of his state appeals. The clerk moved to dismiss, and the prisoner moved for appointment of counsel. The district court granted the motion to dismiss and denied the motion to appoint counsel. The court held that freezing the prisoner's trust accounts did not violate his right to access the courts, did not violate the prisoner's right to procedural due process, and was not an illegal seizure. . According to the court, the indigent prisoner's right to access the courts were not violated, although not having the ability to spend money in his accounts prevented him from copying legal materials, where allowing the prisoner's appeals to proceed in the first place, by having deductions for filing fees made from his inmate trust accounts, did not injure his ability to access the courts. (Wisconsin)

U.S. Appeals Court
EVIDENCE

Fields v. *Wharrie,* 740 F.3d 1107 (7th Cir. 2014). A former prisoner who was wrongfully convicted of murder and sentenced to death brought an action against, county prosecutors, among others, alleging a § 1983 claim of violation of his due process rights and related state tort claims. The former prisoner had been incarcerated for 17 years before the conviction was overturned. The district court partially granted and partially denied a defense motion to dismiss. The defendants appealed. The appeals court reversed and remanded. On remand, the former prisoner moved for reconsideration. The district court granted the motion for reconsideration and vacated its prior order to the extent that it dismissed the former prisoner's federal claim against pros-

ecutor arising from the prosecutor's pre-prosecution fabrication of evidence, and retained jurisdiction over the state claims. The prosecutors appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the prosecutor did not have absolute or qualified immunity from § 1983 claims arising out of his pre-prosecution fabrication of evidence that was later introduced at trial; (2) the prosecutor did not have absolute immunity under Illinois law for his pre-prosecution fabrication of evidence that was later introduced at trial; and (3) remand was required to allow reconsideration of the determination that the prosecutor did not have immunity from state law claims arising out of use of fabricated evidence at retrial. The court noted that absolute immunity afforded to prosecutors is only for acts they commit within the scope of their employment as prosecutors; when they do non-prosecutorial work they lose their absolute immunity and have only qualified immunity. (Illinois)

U.S. District Court
INITIAL APPEARANCE
DUE PROCESS

Gayle v. *Johnson*, 4 F.Supp.3d 692 (D.N.J. 2014). Aliens brought a class-action lawsuit against the Department of Homeland Security (DHS) and numerous other federal and state government agencies, alleging that the defendants' acts of subjecting individuals to mandatory immigration detention violated the Immigration and Nationality Act (INA) and the Due Process Clause. The government moved to dismiss. The district court declined to dismiss the alien's claims for injunctive relief, finding that the aliens had standing to challenge the adequacy of the *Joseph* hearing and associated mandatory detention procedures, and that allegations that the Joseph hearings failed to afford aliens adequate protection were sufficient to state claims for due process violations. (Dept. of Homeland Security, Immigration and Customs Enforcement, District of New Jersey)

U.S. District Court
RETALIATION FOR
LEGAL ACTION

Grenning v. *Klemme*, 34 F.Supp.3d 1144 (E.D.Wash. 2014). A state inmate brought a § 1983 action alleging that prison officials and employees retaliated against him, in violation of the First Amendment, for the content of letters and manuscript he authored, as well as his filing of grievances and a lawsuit. The district court granted the inmate's motion for a protective order. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison mailroom staff members selectively applied the foreign language mail policy as a pretext to prevent the inmate, who filed grievances, from receiving mail from his overseas parents written in Norwegian, as to whether the staff members made an effort to seek translations, and as to whether the policy as applied amounted to a de facto ban on all of the inmate's incoming non-English mail. The court held that the correctional sergeant was not entitled to qualified immunity from the inmate's § 1983 claim that the sergeant retaliated against him, in violation of the First Amendment, when he disciplined the inmate based on disparaging remarks contained in the inmate's outgoing e-mail to his mother, where a reasonable official would have understood that punishing the inmate for the unflattering content of personal correspondence directed to another was unlawful. The court held that there was no causal connection between the inmate's seeking a temporary restraining order (TRO) in separate litigation, and the officials' placing him in solitary confinement over one year later. (Airway Heights Corr. Center, Washington)

U.S. Appeals Court
APPOINTED ATTORNEY

Henderson v. *Ghosh*, 755 F.3d 559 (7th Cir. 2014). An inmate brought an action against prisoner health care providers and other corrections employees, alleging that the defendants were deliberately indifferent to his serious medical needs by failing to inform him of his declining kidney health until he had "stage 5 kidney failure." The district court denied the inmate's motions for recruitment of counsel during the pleading and discovery phases of the litigation, and granted summary judgment to the defendants. The inmate appealed. The appeals court reversed and remanded. The appeals court held that the district court abused its discretion in denying the inmate's two requests for appointment of counsel, where the inmate had a low IQ, was functionally illiterate, and was inexperienced with civil litigation, and the inmate's claim was factually and legally complex, requiring complex medical evidence and retention of expert witnesses. The court held that the inmate was prejudiced by the failure of the district court to appoint counsel, where the inmate was unable to obtain any medical evidence in opposition to summary judgment, the inmate was unable to timely file requests for discovery, and the inmate was unable to identify "John or Jane Doe" defendants who were dismissed for failure to prosecute. (Stateville Correctional Center, Illinois)

U.S. District Court
ATTORNEY FEES
CLASS ACTION
PREVAILING PARTY

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
INVESTIGATION

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 held that the patients' allegations that commitment to MSOP essentially amounted to lifelong confinement, equivalent to a lifetime of criminal incarceration in a facility resembling, and run like, a medium to high security prison, sufficiently stated a § 1983 substantive due process

claim pertaining to the punitive nature of the patients' confinement. The court ordered that its court-appointed experts would be granted complete and unrestricted access to the documents the experts requested, including publicly available reports and documents related to the patients' lawsuit, as well as MSOP evaluation reports and administrative directives and rules. (Minnesota Sex Offender Program)

U.S. District Court
ATTORNEY FEE

Kelly v. *Wengler*, 7 F.Supp.3d 1069 (D.Idaho 2014). State inmates filed a class action against a warden and the contractor that operated a state correctional center, alleging that the level of violence at the center violated their constitutional rights. After the parties entered into a settlement agreement the court found the operator to be in contempt and ordered relief. The inmates moved for attorney fees and costs. The district court granted the motions. The court held that the settlement offer made in the contempt proceeding, by the contractor that operated the state correctional facility, which provided an extension of the settlement agreement, required a specific independent monitor to review staffing for the remainder of the settlement agreement term, and offered to pay reasonable attorney fees, did not give the inmates the same relief that they achieved in the contempt proceeding, and thus the inmates' rejection of the offer did not preclude them from recovering attorney fees and costs they incurred in the contempt proceeding. The court noted that the inmates were already entitled to reasonable attorney fees in the event of a breach, and the inmates achieved greater relief in the contempt proceeding with regard to the extension and the addition of an independent monitor. After considering the totality of the record and the arguments by counsel, the court awarded the plaintiffs' counsel $349,018.52 in fees and costs. (Idaho Correctional Center, Corrections Corporation of America)

U.S. Appeals Court
RESTRAINTS
CLOTHING-COURT APPEARANCE

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
RETALIATION
JAILHOUSE LAWYER

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. 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. Appeals Court
COURT COSTS

Montanez v. *Secretary Pennsylvania Dept. of Corrections*, 773 F.3d 472 (3rd Cir. 2014). Inmates brought a § 1983 action against Pennsylvania Department of Corrections (DOC) officials, alleging that the DOC's implementation of a policy that allowed automatic deduction of funds from their inmate accounts to cover court-ordered restitution, fines, and costs violated their procedural due process rights. The district court granted the officials' motion for summary judgment. The inmates appealed. The appeals court affirmed in part and reversed in part. The court held that the DOC's refusal to provide exceptions to its across-the-board 20% rate of deduction, pursuant to a DOC policy that allowed automatic deduction of funds from inmate accounts to cover court-ordered restitution, fines, and costs, did not violate due process, in light of the fact that the DOC would not make deductions when an inmate's account fell below a certain minimum. The court found that summary judgment was precluded by a genuine issue of material fact regarding the extent of the notice the inmate received with respect to his sentence and the DOC policy that permitted automatic deduction of funds from his inmate account to cover court-ordered restitution, fines, and costs. (Pennsylvania Department of Corrections)

U.S. Appeals Court
LEGAL MAIL

Nordstrom v. *Ryan*, 762 F.3d 903 (9th Cir. 2014). A state death-row inmate brought a § 1983 action for declaratory and injunctive relief against Arizona Department of Corrections (ADOC) officials and a prison guard who allegedly read the inmate's legal mail. A district court dismissed for failure to state a claim. The inmate appealed. The appeals court reversed and remanded, finding that the inmate stated claims for a violation of his

Sixth Amendment right to counsel. According to the court, the inmate, by alleging that the prison guard read, rather than merely inspected or scanned for contraband the inmate's outgoing legal mail related to the appeal of his murder conviction and death sentence, and that prison officials had asserted their entitlement to read a prisoner's legal mail while in the prisoner's presence, stated a claim for violation of his Sixth Amendment right to counsel. (Arizona State Prison)

U.S. District Court
PLRA- Prison Litigation Reform Act
PROCEDURES
EXHAUSTION

Palmer v. *Flore*, 3 F.Supp.3d 632 (E.D.Mich. 2014). A prisoner brought an action against prison officials, alleging that they were deliberately indifferent to his medical needs. The defendants asserted an affirmative defense that the prisoner failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). The district dismissed the defendants' defense with prejudice, finding that the prisoner's timely submission of a Step-I grievance pursuant to the Michigan Department of Corrections' (MDOC) three-step grievance process was sufficient to comply with the PLRA exhaustion requirement, even though the prisoner received no response from prison officials. The court noted that the prisoner completed the required form an slid it through the crack in his cell door, which was apparently a common practice that prisoners in administrative segregation used for submitting grievances. (St. Louis Correctional Facility, Mich.)

U.S. District Court
EVIDENCE

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 Dept. of Corrections)

U.S. District Court
INITIAL APPEARANCE
RESTRAINTS
DUE PROCESS

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, Mass.)

U.S. District Court
INITIAL APPEARANCE

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
ATTORNEY FEES

Rodriguez v. *County of Los Angeles*, 96 F.Supp.3d 1012 (C.D. Cal. 2014). State detainees brought an action against numerous defendants, including a county, a sheriff's department, and individual jail guards and supervisors, alleging excessive force under § 1983. Following a jury verdict in their favor, the detainees moved for attorney fees. The district court granted the motion, holding that: (1) the detainees were entitled to recover fully compensatory attorney fees, notwithstanding the fact that some individual defendants were dismissed or prevailed at trial and that the detainees did not succeed on all motions, where the detainees succeeded on all of their claims; (2) the detainees were entitled to a lodestar multiplier of 2.0; and, (3) the district court would apply only a 1% contribution of the detainees' $950,000 damages award to their attorney fee award, where the defendants' conduct involved malicious violence leaving some detainees permanently injured. The court awarded over $5.3 million for attorney fees. (Men's Central Jail, Los Angeles, California)

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

Stevens v. *Gooch*, 48 F.Supp.3d 992 (E.D.Ky. 2014). An inmate brought an action against a jailer and a county, asserting section 1983 and state law claims related to the adequacy of the jail's medical treatment. The defendants moved for summary judgment. The district court granted the motion. The court found that the inmate sufficiently exhausted administrative remedies under the Prison Litigation Reform Act (PLRA) prior to bringing the § 1983 action, where the inmate filed five grievances related to his ankle injury but never received a response from jail officials. (Lincoln County Jail, Kentucky)

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

Swisher v. *Porter County Sheriff's Dept*., 769 F.3d 553 (7th Cir. 2014). A state inmate brought a § 1983 action against a sheriff and jail personnel, alleging that he was denied medical care while in jail. The district court dismissed the case, and the inmate appealed. The appeals court reversed and remanded. The court held that jail officials "invited" the inmate's noncompliance with grievance procedures, and thus he sufficiently exhausted administrative remedies by asking senior jail officers, up to and including the warden, about how to file a grievance. According to the court, the inmate was told not to file a grievance because the officers understood his problem and would resolve it without the need for invocation of a formal grievance procedure. But those informal resolution procedures were not successful, and the officials did not tell the inmate how to invoke a formal grievance process. (Porter County Jail, Indiana)

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

Taylor v. *Swift*, 21 F.Supp.3d 237 (E.D.N.Y. 2014). A pro se prisoner brought a § 1983 action against city jail officials, alleging that officials failed to protect him from an assault from other inmates, and that officials used excessive force in uncuffing the prisoner after escorting him from showers to his cell. The officials moved to dismiss based on failure to exhaust administrative remedies, and the motion was converted to a motion for summary judgment. The district court denied the motion. The 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. (New York City Dept. of Correction, Riker's Island)

U.S. District Court
WITNESS
VIDEO COMMUNICATION

U.S. v. *Mostafa*, 14 F.Supp.3d 515 (S.D.N.Y. 2014). A defendant was charged with various terrorist-related offenses. The government moved for an order to allow a witness to testify by live closed-circuit television (CCTV) or by deposition. The district court granted the motion. The court held that the testimony of the witness was probative and material to the charges against the defendant, the witness was unavailable to testify in person, the government made good-faith and reasonable efforts to obtain the presence of the witness, and granting the government's motion to allow the witness to testify by live CCTV furthered the interests of justice. The court ordered the cameras to be positioned such that the jury can see witness's face at all times and such that the witness can see the faces of the jurors, defendant, and the questioner as he testifies, as he would in a courtroom. (Southern District, New York)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Wood v. *Yordy*, 753 F.3d 899 (9th Cir. 2014). A state inmate filed an action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983 alleging that prison officials had imposed an unwarranted burden on his exercise of religion. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court affirmed. The court held that the state inmate failed to establish that prison officials retaliated against him, in violation of the First Amendment, for his earlier suit, in which he prevailed on appeal in a § 1983 due process claim, when they restricted his access to a prison chapel during the investigation of his relationship with another guard. (Idaho Correctional Institute–Orofino, Idaho State Correctional Institution)

U.S. District Court
INITIAL APPEARANCE

Ysasi v. *Brown*, 3 F.Supp.3d 1088 (D.N.M. 2014). An arrestee brought a § 1983 action against county sheriff officers and a detention center, alleging false arrest, excessive force, and other claims under the Constitution. The officers and the detention center moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the arrestee presented no evidence that the four-day incarceration prior to his arraignment prejudiced his defense, either in his criminal trial or in the current civil case, by concealing evidence against the arresting county sheriff officers. The court noted that the arrestee was arraigned within the time required by New Mexico rule. (Lea County Detention Center, New Mexico)

2015

U.S. Appeals Court
PRIVILEGED CORRESPONDENCE/MAIL

American Civil Liberties Union Fund of Michigan v. *Livingston County*, 796 F.3d 636 (6th Cir. 2015). A civil rights organization brought a § 1983 action against a county and county officials alleging that the jail's mail policy, pursuant to which all incoming and outgoing mail except "bona-fide legal mail" had to be on standard four-by-six-inch postcards, violated the First and Fourteenth Amendments. Following the grant of a temporary restraining order (TRO), the organization moved for a preliminary injunction. The district court granted the motion and the county appealed. The appeals court affirmed. The court held that the organization had a likelihood of success on the merits of its claim that the policy violated the Fourteenth Amendment's due process protections. The court noted that the organization alleged that the jail blocked delivery of letters sent by the organization's attorney without providing the organization or the intended inmate recipients notice and opportunity to contest the decision. (Livingston County Jail, Michigan)

U.S. District Court
PLRA- Prison Litigation Reform Act
LEGAL MAIL

Angulo v. *Nassau County*, 89 F.Supp.3d 541 (E.D.N.Y. 2015). An inmate brought a pro se action against a county and its correctional facility personnel, alleging the defendants violated his constitutional rights through the destruction of various legal documents and his legal mail. The defendants moved for summary judgment. The district court granted the motion. The court held that: (1) the inmate's letter of complaint did not comply with the correctional facility's grievance procedure, and thus the inmate failed to properly exhaust his administrative remedies; (2) administrative remedies were "available" to the inmate, and thus the inmate was not ex-

cused from filing a grievance; (3) the inmate's allegations that personnel acted willfully and maliciously were insufficient to support the claim that personnel interfered with his ability to access the courts; and (4) personnel did not conspire to destroy the inmate's legal mail. (Nassau County Correctional Center, and Downstate Correctional Facility, New York)

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

Ball v. *LeBlanc*, 792 F.3d 584 (5th Cir. 2015). Death row inmates brought a § 1983 action against a state department of corrections and state officials, seeking declaratory and injunctive relief based on allegations that heat in the prison violated the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). Following a bench trial, the district court sustained the Eighth Amendment claims, rejected the disability claims, and issued a permanent injunction requiring the state to install air conditioning throughout death row. The department and officials appealed and the inmates cross-appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that: (1) the district court did not abuse its discretion by admitting evidence of, or relying on heat index measurements of death-row facilities; (2) the district court did not clearly err in finding that heat in death-row cells posed a substantial risk of serious harm to inmates and that prison officials were deliberately indifferent to the risk posed to death-row inmates by the heat in prison cells; (3) housing of death-row inmates in very hot prison cells without sufficient access to heat-relief measures violated the Eighth Amendment; (4) inmates were not disabled under ADA or RA; and (5) permanent injunctive relief requiring the state to install air conditioning throughout death-row housing violated the Prison Litigation Reform Act (PLRA), where acceptable remedies short of facility-wide air conditioning were available. (Department of Public Safety and Corrections, Louisiana State Penitentiary)

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

Blake v. *Ross*, 787 F.3d 693 (4th Cir. 2015). An inmate brought a § 1983 action against correctional officers, alleging use of excessive force. One officer moved for summary judgment on the ground that inmate failed to exhaust his administrative remedies. The district court granted the motion and the inmate appealed. The appeals court reversed and remanded. The court held that an internal investigation afforded correction officials time and opportunity to address the complaints internally, as required for an exception to the PLRA exhaustion of remedies requirement to apply, and the inmate's belief that he had exhausted administrative remedies was a reasonable interpretation of the inmate grievance procedures. (Maryland Reception Diagnostic and Classification Center)

U.S. District Court
FILING FEES

Carter v. *James T. Vaughn Correctional Center*, 134 F.Supp.3d 794 (D. Del. 2015). A state prisoner filed a pro 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
EXPERT WITNESS

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 even if an expert's report prepared for the plaintiff had been filed on time, the report would have been excluded due to the expert's lack of qualifications. According to the court, the expert only pointed to national statistics as support for his opinion that the detainee possessed predisposing characteristics that made her an obvious risk for suicide, and the expert's opinions that the officers were improperly trained and a reasonable mental health clinician would have deemed the detainee to pose a suicide risk were irrelevant. (Suffolk County House of Correction, Massachusetts)

U.S. Appeals Court
APPOINTED ATTORNEY

Childress v. *Walker*, 787 F.3d 433 (7th Cir. 2015). A state prisoner brought an action under § 1983 alleging that administrators and individuals affiliated with a correctional center violated his rights under the Eighth Amendment and the Due Process Clause. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a claim for relief under the Eighth Amendment with allegations that the prison administrator knew that conditions of his mandatory release included a ban on computer-related material, but nevertheless instituted, condoned, or willfully turned a blind eye to the practice that placed computer-related material among his possessions. The court also found that the district court had to determine, upon the prisoner's motion for appointment of counsel, whether the prisoner, from the confines of his present institutional situation, could adequately investigate and articulate, in accordance with established practices of § 1983 liability, familiarity of each defendant with the practices of the educational program that placed computer-related material among his possessions, even though the conditions of his mandatory release included a ban on computer-related material. (Big Muddy River Corr. Center, Illinois)

U.S. Appeals Court
IN FORMA PAUPERIS
RETALIATION

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. Appeals Court
IN FORMA PAUPERIS
RETALIATION

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. Appeals Court
RESTRAINTS
CLOTHING- COURT APPEARANCE

Elmore v. *Sinclair*, 799 F.3d 1238 (9th Cir. 2015). After affirmance of a state prisoner's murder conviction pursuant to a guilty plea, and his death sentence following a penalty-phase jury trial, the prisoner petitioned for federal habeas relief. The district court denied relief and the prisoner appealed. The appeals court affirmed. The court held the prisoner was not prejudiced by being shackled for the first day of jury selection for the penalty phase. According to the court, even assuming that visible shackling of the defendant violated due process, the defendant was not prejudiced because the nature of the defendant's crime was a gruesome and violent murder, the defendant had agreed, as part of the defense strategy, to show his acceptance of responsibility, and to appear before the jury in jail clothing for the entire penalty phase, the first impression created by the defendant's shackling was partly the point of the defense strategy, and for almost three full weeks the defendant did not appear in shackles before the jury that issued the death sentence. (Whatcom County, Washington)

U.S. District Court
INITIAL APPEARANCE
RIGHT TO COUNSEL
DUE PROCESS

Fant v. *City of Ferguson*, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city's policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part.

The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents' Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city's failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly stated a pattern and practice of Due Process violations; (4) allegations of conditions of confinement were sufficient to state a plausible claim for Due Process violations; and (5) the residents could not state an Equal Protection claim for being treated differently, with respect to fines, than civil judgment debtors. The court noted that the residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. (City of Ferguson, Missouri)

U.S. District Court
LAW LIBRARY

Gannaway v. *Prime Care Medical, Inc*., 150 F.Supp.3d 511 (E.D. Pa. 2015). A state inmate brought § 1983 action against Pennsylvania Department of Corrections (DOC) employees, private companies and healthcare professionals contracted to provide medical services to DOC institutions, alleging that he received inadequate medical treatment throughout his incarceration, in violation of the Eighth Amendment, and that he was retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motions. The court held that the inmate failed to show that he suffered any actual injury from the prison officials' alleged denial of access to a law library or paralegal assistance, as would support his § 1983 First Amendment access to courts claim. According to the court, the dockets from the inmate's civil rights cases showed that courts granted him extensions to file documents whenever requested, and a case initiated by the inmate was dismissed after he responded to the defendants' motion for summary judgment and the court granted summary judgment in favor of the defendants. (Pennsylvania State Correctional Institution (SCI) at Rockview, and Prime Care Medical).

U.S. District Court
IN FORMA PAUPERIS
INDIGENT INMATES

Harris v. *Doe*, 78 F.Supp.3d 894 (N.D. Ill. 2015). In two related actions, an inmate, proceeding pro se, alleged § 1983 claims against prison officers for deprivations of his civil rights. The inmate sought to proceed in forma pauperis in these suits. The district court dismissed the suits, holding that the inmate's allegation of poverty in his applications to proceed in forma pauperis was untrue. The court noted that the inmate represented that he had not received more than $200 in funds over the preceding 12 months from any of numerous categories listed in the application, including a catch-all category of "any other source." According to the court, his prisoner trust fund account reflected a $3,000 deposit, the inmate quickly withdrew most of that $3,000 by writing checks to a "friend" or "friends" who in turn later re-deposited those funds into his account over the next several months, and the inmate promptly expended these re-deposits on commissary items well before he filed his suits. (Cook County Jail, Illinois)

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

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. Appeals Court
PLRA- Prison Litigation Reform Act
ACCESS TO ATTORNEY

Kervin v. *Barnes*, 787 F.3d 833 (7th Cir. 2015). A state prisoner brought a § 1983 action against prison officials, alleging that he was placed in segregation as punishment for insisting on keeping his appointment with an attorney and that he was denied due process when he sought redress from the prison's grievance system. The district court, pursuant to the screening process of the Prison Litigation Reform Act (PLRA), dismissed the suit on the pleadings. The prisoner appealed. The appeals court affirmed. The court held that the state prisoner did not provide any information as to the content or purpose of his meeting with the attorney, precluding any finding as to whether the meeting involved protected speech, as required to support the prisoner's § 1983 claim that he was punished not for his insubordinate speech to a prison guard, but rather for meeting with, and presumably talking to, an attorney. (Indiana Department of Corrections)

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

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. District Court
PLRA- Prison Litigation Reform Act
EXHAUSTION

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. The court held that the inmate failed to exhaust his available administrative remedies, as required prior to bringing suit with respect to prison conditions under the Prison Litigation Reform Act (PLRA), as to his claim that after he was sprayed with pepper spray, he was forced to sleep on a mattress that was contaminated with pepper spray, without sheets, for weeks. The court noted that the inmate failed to file a request for an administrative

remedy on the issue of the contaminated mattress, and raised the issue for first time in his appeal to the inmate grievance office regarding the officer's use of pepper spray. (North Branch Correctional Institution, Maryland)

U.S. APPEALS COURT
PLRA- Prison Litigation Reform Act
EXHAUSTION

Lee v. *Willey*, 789 F.3d 673 (6th Cir. 2015). A former prisoner brought a § 1983 claim against a part-time prison psychiatrist, alleging that he suffered sexual abuse by another prisoner as a result of the psychiatrist's deliberate indifference to his health and safety in violation of the Eighth Amendment. The district court entered summary judgment in the psychiatrist's favor. The former prisoner appealed. The appeals court affirmed, finding that the district court's ruling that the former prisoner did not submit a substitute prison grievance letter was not clearly erroneous, and the former prisoner failed to exhaust administrative remedies prior to bringing his § 1983 claim. (Charles Egeler Reception and Guidance Center, Michigan)

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

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
PLRA- Prison Litigation Reform Act

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). (Eastern Correctional Institution, Maryland)

U.S. Appeals Court
APPOINTED ATTORNEY

Naranjo v. *Thompson*, 809 F.3d 793 (5th Cir. 2015). An inmate filed a § 1983 action against the management company of a prison in which he was incarcerated. The district court denied the inmate's motion for appointment of counsel, and entered summary judgment in the company's favor. The inmate appealed. The appeals court vacated and remanded. The court held that the district court abused its discretion in failing to consider using its inherent power to compel counsel to accept uncompensated appointment after it determined that the inmate's § 1983 action against the management company presented exceptional circumstances, even though such appointment was not authorized by statute. (Reeves County Detention Center, Pecos, Texas, operated by GEO Group, Inc.)

U.S. District Court
EXPERT WITNESS
PLRA- Prison Litigation Reform Act

Norsworthy v. *Beard*, 87 F.Supp.3d 1164 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate's gender dysphoria in violation of Eighth Amendment. The inmate moved to strike expert testimony and for a preliminary injunction requiring the defendants to provide her with sex reassignment surgery (SRS). The defendants moved for judicial notice. The district court granted the motions in part and denied in part. The district court found that the expert report of a psychiatrist retained by the officials and medical staff would not be stricken for failure to comply with the requirements for disclosure of expert qualifications, and that the expert was qualified to testify regarding prison culture and the treatment that incarcerated persons with gender dysphoria should receive. The court noted that notwithstanding years of treatment in the form of hormone therapy and counseling, the inmate continued to experience severe psychological pain, and that the treating and examining psychologists agreed the inmate met the eligibility criteria for SRS under the standards of care for treating transsexual patients. The court held that: (1) the inmate was likely to succeed on the merits of the Eighth Amendment claim; (2) the inmate was suffering irreparable harm that would likely continue absent a preliminary injunction; (3) the balance of equities weighed in favor of granting an injunction; (4) it was in the public interest to grant an injunction; and (5) an injunction would meet the requirements of the Prison Litigation Reform Act (PLRA). (Mule Creek State Prison, California)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

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
PRO SE LITIGATION
APPOINTED ATTORNEY

Perez v. *Fenoglio*, 792 F.3d 768 (7th Cir. 2015). An inmate brought a pro se § 1983 action against prison officials alleging cruel and unusual punishment in violation of the Eighth Amendment, in particular, that the officials were deliberately indifferent to his severe hand injury, delaying his receipt of medically necessary surgery for ten months. After twice denying the inmate's request for pro bono counsel, the district court dismissed the

action with prejudice, for failure to state a claim. The inmate appealed and appellate counsel was appointed. The appeals court reversed and remanded. The court held that: (1) the inmate stated a claim against a prison physician for such serious delays in the provision of adequate treatment that the Eighth Amendment may have been violated; (2) the inmate stated a claim against a prison nurse for deliberate indifference; (3) the inmate sufficiently identified an unconstitutional policy or practice to state a claim under § 1983 against the private corporation that served as the prison's health care provider; (4) the inmate stated a claim for deliberate indifference against the prison's health care administrator; (5) the inmate stated a claim for deliberate indifference against prison grievance officials; (6) the inmate stated a valid First Amendment retaliation claim; and (7) the district court's denial of the inmate's request for pro bono counsel was not unreasonable. (Lawrence Correctional Center, Illinois)

U.S. District Court
APPOINTED ATTORNEY

Pinson v. *U.S. Department of Justice*, 104 F.Supp.3d 30 (D.D.C. 2015). A federal prison inmate brought an action against the Department of Justice (DOJ), alleging DOJ withheld records from him in violation of the Freedom of Information Act (FOIA) and the Privacy Act. The inmate moved for sanctions, a protective order, appointment of counsel, an order to show cause, production of documents, and a preliminary injunction. The district court granted the motion in part and denied in part. The court held that the inmate would be appointed counsel for the limited purpose of reviewing correspondence withheld by the Bureau of Prisons (BOP) and determining DOJ's compliance with FOIA. The court found that sanctions for the DOJ's failure to timely comply with a court order were not warranted. The court noted that the BOP's mail policy prevented the inmate from reviewing the DOJ's FOIA responses, preventing him from properly litigating his FOIA claims. (Federal Bureau of Prisons, ADX Florence, Colorado)

U.S. District Court
RETALIATION FOR LEGAL ACTION
JAILHOUSE LAWYER

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
RETALIATION FOR LEGAL ACTION
JAILHOUSE LAWYER

Quiroz v. *Short*, 85 F.Supp.3d 1092 (N.D.Cal. 2015). A state prisoner brought an action against prison officials, alleging that the officials retaliated against him for filing a prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the official acted with a retaliatory motive when he sent to the prisoner's fiance a letter intended for another woman; (2) whether the prison official acted with a retaliatory motive when he issued a rules violation report (RVR) against the prisoner; and (3) whether officials had an agreement to retaliate against the prisoner by issuing the RVR against him. The court found that: (1) the official did not have a retaliatory motive in investigating an administrative grievance; (2) the prisoner's assertion that one of the official's duties was to monitor incoming and outgoing mail was insufficient to show that the official destroyed two specific pieces of the prisoner's mail; (3) the official was entitled to qualified immunity on the prisoner's right to intimate association claim; and (4) the official's act of sending a letter to the prisoner's fiancé that was intended for another woman did not prevent the prisoner from continuing to associate with his fiancé and did not prevent the prisoner from marrying his fiancé. (Pelican Bay State Prison, Secure Housing Unit, California)

U.S. Appeals Court
CLASS ACTION

Rodriguez v. *Robbins*, 804 F.3d 1060 (9th Cir. 2015). A petitioner sought a writ of habeas corpus, on behalf of himself and a class of aliens detained during immigration proceedings for more than six months without a bond hearing, seeking injunctive and declaratory relief providing individualized bond hearings with the burden on the government, certification of the class, and appointment of class counsel. The district court denied the petition. The petitioner appealed. The appeals court reversed and remanded. On remand, the district court entered a preliminary injunction and the government appealed. The appeals court affirmed. The district court then granted summary judgment to the class and entered a permanent injunction, and the parties appealed. The appeals court affirmed in part and reversed in part. The court held that the aliens were entitled to automatic individualized bond hearings and determinations to justify their continued detention. The court ruled that the government had to prove by clear and convincing evidence that an alien was a flight risk or a danger to the community to justify denial of a bond at the hearing. (Immigration and Customs Enforcement, Los Angeles, California)

U.S. Appeals Court
RETALIATION FOR LEGAL ACTION

Rowe v. *Gibson*, 798 F.3d 622 (7th Cir. 2015). A prisoner brought § 1983 claims against prison administrators and employees of a prison medical services company, claiming that the defendants were deliberately indifferent to his serious medical needs by preventing him from having access to heartburn medication before he ate meals, and by denying him access to prescribed, rather than over-the-counter, heartburn medication for 33 days, in violation of the Eighth Amendment. The district court granted summary judgment to the defendants. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that summary judgment was precluded by issues of fact as to whether restricting the time the prisoner took heartburn medication, several hours after a meal, departed from professional practice, and whether prison medical staff told the prisoner that they were withholding the prisoner's heartburn medication to convince the prisoner not to file lawsuits. (Corizon, Inc., and Pendleton Correctional Facility, Indiana)

U.S. Appeals Court
COURT COSTS
PLRA- Prison Litigation Reform Act
IN FORMA PAUPERIS

Siluk v. *Merwin*, 783 F.3d 421 (3rd Cir. 2015). An indigent state prisoner who had been allowed to file in forma pauperis commenced an action alleging that the director of a county domestic relations section deprived him of his federal income tax refund, in violation of the Fourteenth Amendment. The district court dismissed the prisoner's complaint, and ordered collection of an initial partial filing fee, followed by monthly installments. The prisoner appealed. The appeals court held that under the Prison Litigation Reform Act (PLRA), monthly income of an indigent state prisoner who owed two separate court fees was subject to a single monthly 20% deduction. (State Corr. Institution, Rockview, Penn., and Perry County Domestic Relations Section)

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

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, Wisconsin)

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. Appeals Court
PLRA- Prison Litigation Reform Act

U.S. v. *Secretary, Florida Dept. of Corrections*, 778 F.3d 1223 (11th Cir. 2015). The federal government brought an action against the Florida Department of Corrections (DOC), alleging that the DOC's failure to provide a kosher diet to all of its prisoners with sincere religious grounds for keeping kosher violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the DOC's motion for a preliminary injunction and the federal government appealed. The appeals court vacated the district court decision and dismissed the appeal. The court held that the preliminary injunction did not comply with the Prison Litigation Reform Act (PLRA), and thus, expired after 90 days. The court noted that injunctive relief was not narrowly drawn, extended further than necessary to correct the violation of the federal right, and was not the least intrusive means necessary to correct the violation, in violation of PLRA. (Fla. Dept. of Corrections)

U.S. District Court
INVESTIGATION
DUE PROCESS

United States v. *Binh Tang Vo*, 78 F.Supp.3d 171 (D.D.C 2015). A defendant being prosecuted for an alleged conspiracy to commit visa fraud moved to quash subpoenas that were issued by the prosecutors. The defendant was housed in a District of Columbia correctional facility and the prosecutors had sought copies of visitation logs, call logs, and recorded telephone calls of two co-defendants who had previously entered guilty pleas. The district court granted the defendant's motion to prevent the release of these documents. The court held that the government's subpoenas exceeded the bounds of a rule governing issuance of subpoenas in criminal cases, and the subpoenas amounted to a mere "fishing expedition," and thus retroactive approval was unwarranted. (Correctional Treatment Facility, District of Columbia)

U.S. District Court
WITNESS

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)

U.S. District Court
COMPUTERS
ACCESS TO ATTORNEY

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. District Court
PLRA- Prison Litigation Reform Act
EXHAUSTION

Vaden v. *U.S. Department of Justice*, 79 F.Supp.3d 207 (D.D.C. 2015), A federal prisoner filed suit under the Privacy Act against the Department of Justice, seeking injunctive relief for the correction of alleged inaccuracies with respect to the determination of his custody classification and security level. The prisoner sought damages. The Department filed a motion to dismiss for failure to exhaust administrative remedies, and the prisoner filed a motion for summary judgment. The district court dismissed the action. The court held that the prisoner's failure to exhaust administrative remedies did not warrant dismissal under the provisions of the Prison Litigation Reform Act (PLRA), but the prisoner's custody classification and determination of security level were part of an inmate central records system that was expressly exempt from agency obligations under the Privacy Act. (Federal Bureau of Prisons, United States Penitentiary—II, Coleman, Florida)

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

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, Georgia)

U.S. Appeals Court
LEGAL MATERIAL

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's claim of theft of legal documents should be considered as one for impeding access to the courts. (Wende Correctional Facility, New York)

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

Wilson v. *Epps*, 776 F.3d 296 (5th Cir. 2015). A state prisoner brought an action alleging prison officials violated his constitutional rights. The district court dismissed the complaint for failure to exhaust administrative remedies and the prisoner appealed. The appeals court affirmed, finding that the Mississippi Department of Corrections' implementation of a "backlogging" policy did not abrogate the Prison Litigation Reform Act's (PLRA's) exhaustion requirement, and the prison's failure to respond at the first step of a three step grievance process did not excuse the prisoner's failure to exhaust administrative remedies. (Central Mississippi Correctional Facility)

U.S. District Court
EVIDENCE

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, N.Y.)

2016

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

Reyes v. *Smith*, 810 F.3d 654 (9th Cir. 2016). A state prisoner brought a § 1983 action against prison physicians, alleging that they had violated the Eighth Amendment through deliberate indifference to his medical needs by denying him pain medication. The district court granted the physicians' motion to dismiss. The prisoner appealed. The appeals court reversed and remanded. The court held that as a matter of first impression, a prisoner exhausts administrative remedies under the Prison Litigation Reform Act (PLRA), despite not complying with the procedural rule, if prison officials decide the merits of a grievance at each step of the administrative process. According to the court, the prisoner's grievance was sufficient to exhaust his available remedies under the state prison grievance system. (Mule Creek State Prison, California)

SECTION 2: ADMINISTRATION

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.

1972

U.S. District Court

Brenneman v. Madigan, 343 F.Supp. 128 (N.D. Ca. 1972). Federal courts do not superintend jails, but they enforce the Constitution. (Alameda County Jail Facility, California)

U.S. District Court
COMMISSARY
PRISONER ACCOUNTS

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. Supreme Court
STAFF CONTRACTS

Perry v. Sindermann, 408 U.S. 593 (1972). The respondent was employed in a state college system for 10 years, the last four as a junior college professor under a series of one-year written contracts. The Regents declined to renew his employment for the next year, without giving him an explanation or prior hearing. He then brought this action in the district court, alleging that the decision not to rehire him was based on his public criticism of the college administration and thus infringed on his free speech right, and that the Regents' failure to afford him a hearing violated his procedural due process right.

The district court granted summary judgment for the Regents, concluding that the professor's contract had terminated and the junior college had not adopted the tenure system. The court of appeals reversed on the grounds that, despite lack of tenure, nonrenewal of the contract would violate the fourteenth amendment if it was in fact based on his protected free speech, and that if he could show that he had an "expectancy" of re-employment, the failure to allow him an opportunity for a hearing would violate the procedural due process guarantee.

The United States Supreme Court agreed with the appeals court, **holding**:

1. Lack of a contractual or tenure right to re-employment, taken alone, did not defeat the employee's claim that the nonrenewal of his contract violated his free speech right under the first and fourteenth amendments. The district court therefore erred in foreclosing determination of the contested issue whether the decision not to renew was based on his exercise of his right of free speech. Pp. 596-598,

2. Though a subjective "expectancy" of tenure is not protected by procedural due process, the employee's allegation that the college had a **de facto** tenure policy, arising from rules and understandings officially promulgated and fostered, entitled him to an opportunity of proving the legitimacy of his claim to job tenure. Such proof would obligate the college to afford him a requested hearing where he could be informed of the grounds for his nonretention and challenge their sufficiency. Pp. 599-603. 430 F.2d 939, affirmed.

1973

U.S. District Court
RECORDS
PRISONER ACCOUNTS

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. Any diet prescribed by a physician must be provided for the patient, and a record of each prescribed diet must be available for cooks and servers. Personal items not permitted will be recorded on property receipts and placed in property file envelopes. Money may be left for prisoners during the day shift and the evening shift. (Jackson County Jail, Kansas City, Missouri)

1974

U.S. District Court
RECORDS

Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Jail officials shall preserve for at least two years from the date of decisions all notices, charges, reports, used, made or procured, and all findings and decisions made in connection with any disciplinary proceedings. (Mecklenburg County Jail, North Carolina)

1975

U.S. District Court
RECORDS

Fitzgerald v. Procunier, 393 F.Supp. 335 (N.D. Calif. 1975). A written record with an explanation is ordered for disciplinary a decision. Right to counsel for disciplinary proceedings is limited. (San Quentin State Prison, California)

1980

U.S. Appeals Court
CONDITIONS

Bono v. Saxbe, 620 F.2d 609 (7th Cir. 1980). While the institutional administration can change the conditions of confinement for administrative reasons as they see fit, they cannot incarcerate individuals under conditions which are violative of the eighth amendment regardless of whether the purpose is administrative or punitive. (Marion Federal Prison, Illinois)

U.S. District Court
RECORDS

United States ex rel. Smith v. Robinson, 495 F.Supp. 696 (E.D. Penn. 1980). A state disciplinary regulation which requires that all discipline be proven by a preponderance of the evidence creates a protected liberty interest in having that regulation followed. A misconduct report does not itself constitute evidence and, when weighed against witnesses who explain the alleged violation in a manner suggesting that there was no violation in fact, it does not constitute a preponderance of the evidence so as to form a basis for a disciplinary decision. (Correctional Institution, Graterford, Pennsylvania)

1981

U.S. Appeals Court
RECORDS

Pace v. Oliver, 634 F.2d 302 (5th Cir. 1981). An absolute institutional policy against the production of institutional records at institutional disciplinary proceedings is unreasonable and violates due process. In determining whether the records ought to be produced in the disciplinary proceeding, the burden of production and the possibility that the records contain confidential information ought to be weighed against the apparent relevancy of the information. (Holman State Prison, Alabama)

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. (Fayette County, Kentucky)

1983

U.S. District Court
EMPLOYEE QUALIFICATIONS

Aguilera v. Cook County Police and Corrections Merit Board, 582 F. Supp. 1053 (N.D. Ill. 1983). Federal court upholds educational requirements for correctional officers. In spite of a potentially discriminatory impact on Spanish Surnamed Americans, a federal district court judge in Illinois has found the Cook County requirement of high school education reasonably related to the job requirements for the correctional officer position.

County officials argued that the educational requirement was necessary because an officer's duties include knowledge and understanding of rules, regulations, and policies,

writing reports and other duties. The ten weeks of training provided to officers includes college courses in report writing, law enforcement, speech and correctional law. (Cook County, Illinois)

State Appeals Court
WORKING CONDITIONS
UNEMPLOYMENT

Delaware County Prison v. Com. Unemp. Comp. Bd., 455 A.2d 790 (Penn. App. 1983). A guard who quits her job because of hazardous working conditions 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 of which were 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)

1985

State Appeals Court
EMPLOYEE DISCIPLINE

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
DISCRIMINATION

Edwards v. Dept. of Corrections, 615 F.Supp. 804 (D. Ala. 1985). An employment discrimination action was brought by a man who was not appointed shift commander at a women's prison. Following a nonjury trial, the district court held that: (1) failure to promote the man to position of shift commander could not be justified on the ground that he would not have been promoted even in the absence of a discriminatory motive; (2) sex was not a bona fide occupational qualification for the position; and (3) the man was entitled to back pay and, if the position were open, reinstatement to the position of shift commander.

The employer, who admitted denying the man promotion to shift commander at the women's prison because of his sex but argued that he would still not have been promoted even if there were no discriminatory motive, bore the burden of establishing what it would have done absent a discriminatory motive.

The failure to promote the man, who had occupied the position of acting shift commander at the women's prison for nearly one year without any apparent difficulty, to the position of shift commander could not be justified on the ground that being female was a bona fide occupational qualification for that position. (Julia Tutwiler Prison for Women, Alabama)

State Appeals Court
PRISONER ACCOUNTS

Flowers v. Smith, 496 N.Y.S.2d 149 (A.D. 4 Dept. 1985). A New York appellate court reversed a lower court and held that compelling inmates to reimburse the state for postage costs that exceed their limited free amount is constitutionally permissible. A department directive which provides free postage for five letters per week requires inmates to pay postage for letters in excess of that amount. The money is deducted from their inmate accounts, and there is no provision for recoupment after the inmate is released from prison. (Attica Correctional Facility, New York)

U.S. Appeals Court
DISCRIMINATION
WORKING CONDITIONS

Hayes v. Vessey, 777 F.2d 1149 (6th Cir. 1985). Although a corrections officer was perhaps incompetent and held animosity toward a teacher because she was a woman, he was not liable for failing to protect her from being raped while he was on lunch break, ruled the Sixth Circuit Court of Appeals.

The teacher claimed discrimination and denial of equal protection because the guard had not ticketed the rapist earlier in the day when discovered on the grounds without authorization. She claimed he set the tone for extremely lax security which caused her to be raped. He was not liable on such a theory because as a subordinate employee he had no authority to set a security policy, nor was he responsible for not ticketing the rapist earlier because such action was too remote from causation. Another teacher allowed the rapist to regain entry during lunch by unlocking the gate

in violation of school rules. Finally, even if the guard had been at his station during the fifteen minute attack, he would not have been able to hear the woman's cries for help. His station was located at the end of the hall, and her room was soundproof. The court reversed a jury's judgment against the officer for $200,000 in compensatory damages and $100,000 in punitive damages.

Also at issue was whether the teacher could collect from other prison officials for negligence in ignoring high levels of sexual tension, condoning an attitude of indifference toward danger to female employees, failing to require adequate security for female employees, assigning her to work in a remote area more dangerous than areas assigned to male teachers, and defeating automatic locking systems which led to the unauthorized entry of the rapist. The court found no liability for the random act and ruled that the plaintiff's remedy in worker's compensation precluded suit. She received compensation disability benefits which contained special provisions for prison employees injured by inmates, provisions not applicable to other employees. (State Prison at Jackson, Michigan)

U.S. Appeals Court
PRISONER ACCOUNTS

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.

The Eighth Circuit Court of Appeals ruled that transfers of property, whether from coercion or voluntary, from prisoners to law enforcement officials were illegal. Policies preventing the gifts are in the public's interest, both to protect officials from being influenced by gifts and to prevent inmates from feeling compelled to give gifts. The sheriff wrongfully accepted tools and other personal property from the inmate found on a stolen truck. The inmate claimed the sheriff forced him to make the transfer threatening him that he would never see his son, who was in a state prison, if he didn't cooperate. Regardless of the circumstances, officials are forbidden from accepting property from prisoners. Each was awarded $100.00. (Phelps County Jail, Missouri)

State Appeals Court
DISCRIMINATION

Ind. Dept. of Correction v. Ind. Civ. Rights, 486 N.E.2d 612 (Ind. App. 1 Dist. 1985). After remand, 464 N.E.2d 29, the Department of Corrections (DOC) appealed from judgment of the circuit court affirming a finding of Civil Rights Commission that the DOC unlawfully discriminated against a female applicant on the basis of her sex and ordered that DOC offer her the director of education position when the next vacancy occurred. The court of appeals held that: (1) the trial court's findings and conclusions were adequate; (2) the conclusion that the DOC intentionally discriminated against the applicant was supported by sufficient evidence; (3) the commission was entitled to conclude that DOC had failed to establish that sex was a bona fide occupational qualification based on security concerns and inmates' privacy rights; and (4) the Commission's remedial order did not exceed its authority.

The conclusion that the Department of Corrections intentionally discriminated against the female applicant for the positions of director and assistant director of education at the maximum security institution was supported by sufficient evidence, where the plaintiff presented substantial evidence that her qualifications were equal to or exceeded those of two successful male applicants, that the DOC had never hired a woman for a full-time position in the institution's education program and that the DOC was predisposed to discriminate against women seeking positions at the institution.

The Civil Rights Commission's finding that an employer had failed to establish the existence of a valid defense of a bona fide occupational qualification would be reversed only if the evidence was uncontradicted and led unerringly to a conclusion different from that reached by fact finder.

The Civil Rights Commission had authority to order the maximum security institution to consider proposed modifications in its physical plant as a remedy for sex-based employment discrimination. (Dept. of Corrections, Indiana)

U.S. District Court
DISCRIMINATION

Jones v. Mississippi Dept. of Corrections, 615 F.Supp. 456 (D.C. Miss. 1985). Two black prison guards brought a civil rights action claiming racial discrimination in the employment promotion practices. The district court held that: (1) the first guard's allegations were insufficient to establish a prima facie case of disparate treatment; (2) evidence with respect to the second guard was sufficient to establish a prima facie case of disparate impact under Title VII; and (3) evidence was insufficient to establish that an oral examination process for promotion of prison guards was job related for purposes of rebutting a prima facie case.

In a disparate treatment case involving allegations of discrimination in promotion practices, Title VII plaintiff must show the following: that he belongs to a group protected by the statute; he was qualified for the position to which he sought promotion; he was not promoted; and after his nonpromotion, the employer continued to seek applicants not in the plaintiff's protected class or promoted those having comparable or lesser qualifications, not in the plaintiff's protected class.

The employer does not bear the burden of persuading the court that he was actually motivated by proffered reasons for the allegedly discriminatory employment decision. Rather, the employer need only raise genuine issue of fact as to whether there was illegal discrimination involved in the plaintiff's discharge.

A black prison guard's allegations that he was denied promotion from sergeant to lieutenant, and that a white prison guard who was less qualified was promoted instead were insufficient to establish a prima facie case of disparate treatment, in light of the evidence that the plaintiff lacked the requisite one year and six-month experience as a sergeant necessary to qualify for promotion to lieutenant.

The black prison guard who brought an unsuccessful action alleging discrimination in promotion employment practices was not required to pay defendants' attorneys' fees and expenses pursuant to 42 U.S.C.A. Section 1988, where the action was not frivolously brought.

Besides providing evidence of business necessity of examination process, and thereby validating it, the employer may attack the plaintiff's case based on allegation of disparate impact in the employment practice by showing that statistical proof is unacceptable. (Department of Corrections, Mississippi)

U.S. District Court
PROPERTY

Kelly v. United States, 630 F.Supp. 428 (W.D.Tenn. 1985). When a prisoner and his property enter into the custody and possession of the marshal's service for transportation, a duty of due care arises which requires the service to inventory personal property items of value and establish a chain of custody for that property. Failure to do so constitutes a breach of that duty and renders the government liable under the Tort Claims Act. The government was liable, even though the inmate was housed in various state prison facilities during his transit, and his diamond ring very well could have been lost in any one of those institutions. (Tennessee)

State Appeals Court
PRISONER ACCOUNTS

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)

State Appeals Court
EMPLOYEE DISCIPLINE

Malone v. Dept. of Corr., La. Training Inst., 468 So.2d 839 (La.App. 1st Cir. 1985). A former correctional officer at an institution for girls appealed from an opinion of the State Civil Service Commission ordering his termination. The court of appeals held that: (1) the Civil Service Commission was not clearly wrong in ordering the officer's termination for failure to obey orders, and (2) termination, rather than suspension, was properly ordered.

A correctional security officer's admission to the superintendent at the institution for girls and to the officer's superior that he tore up a statement he had written concerning an earlier unusual occurrence was sufficient to support the officer's termination, even though the superintendent neither saw nor heard the incident of tearing up the statement, as required by disciplinary rules. The correctional security officer was not being twice disciplined for the same offense when he was terminated for insubordination, even though he was earlier denied a merit increase for the same offense, in that denial of a merit increase is not considered a disciplinary action. (Louisiana Training Institute for Girls)

U.S. Supreme Court
TRANSPORT COSTS

Pennsylvania Bur. of Correction v. U.S. Marshals, 106 S.Ct 355 (1985). U.S. Marshals cannot be ordered by federal court to transport state inmates to federal courts.

A federal district court had directed state officials to bring five prisoners to the county jail nearest to the court house and had ordered the United States Marshals to bring the prisoners from that jail to the court house to testify in a prisoner's civil rights action against county officials. The Marshals Service appealed the district court order, which was reversed in part by the U.S. Court of Appeals for the Third Circuit. On appeal, the U.S. Supreme Court held that: (1) although statutes require U.S. marshals to obey mandates of federal courts and to transport prisoners if so ordered, the authority to issue the writ must derive from an independent statutory source;
(2) statutes do not authorize writ of habeas corpus ad testificandum to be directed to anyone other than the prisoner's custodian; and (3) the All Writs Act does not authorize courts to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate. (Pennsylvania Bureau of Corrections)

U.S. District Court
PRISONER ACCOUNTS

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)

U.S. District Court
INSPECTION

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

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

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

1986

U.S. Appeals Court
PRISONER ACCOUNTS

Camp v. Oliver, 798 F.2d 434 (11th Cir. 1986). The primary issue in this appeal was whether a Georgia inmate's untrue statements of poverty in obtaining pro se status created grounds for dismissal with or without prejudice. After he filed his complaint alleging deliberate indifference to medical needs and obtained permission to proceed in forma pauperis under 28 U.S.C. Section 1915, the court learned he had funds in his prison account sufficient to eliminate his status of poverty.

The appeals court ruled dismissal with prejudice was too harsh a penalty because there was no showing of bad faith on the part of the inmate. He attached a certification by the prison financial officer attesting to the amount he believed was in his account. The court believed that the inmate was not intentionally misrepresenting his financial condition, especially in light that he offered partial fee payment after learning of his funds. (North Unit at Hardwick, Georgia)

State Court
STAFF CONTRACTS
WORKING CONDITIONS

Dept. of Corr. v. Corr. Officer, 514 A.2d 405 (1986). Correctional officer supervisors filed a number of grievances requesting overtime for the two and one-half hours per week which they had been working in excess of thirty-seven and one-half hours. The State Personnel Commission determined that the supervisors were entitled to such additional compensation from the date the grievances were filed to the date they

executed a new contract plus thirty days of retrospective relief. The Superior Court, New Castle County, affirmed the basic decision but reversed the commission as to the thirty day retrospective relief, and the Department of Correction appealed. The Supreme Court held that once the union local was decertified, correctional officer supervisors were no longer "represented by an exclusive bargaining representative," and therefore merit system rules governed their work hours from the time of the local union's decertification until the supervisors elected a new union and executed a new contract. (Department of Corrections, Delaware)

U.S. Appeals Court
STAFF CONTRACTS

Dorr v. County of Butte, 795 F.2d 875 (9th Cir. 1986). A probationary regular employee of a county sheriff's department served at the will of the appointing authority. He had no reasonable expectation of continued employment. The power of the appointing authority to determine, on a purely subjective basis, whether a probationary employee had performed satisfactorily undercut any expectation of continued employment that might otherwise have risen. Thus, it was immaterial for due process purposes whether the employee's "probationary rejection" after his arrest was in reality a "disciplinary dismissal." (Butte County Sheriff's Department, California)

U.S. District Court
WORKING CONDITIONS
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. Appeals Court
STAFF DISCIPLINE

Fiorillo v. U.S. Dept. of Justice, Bureau of Prisons, 795 F.2d 1544 (Fed.Cir. 1986). A correctional officer's statements to the press, suggesting that a female inmate and a female employee had been sexually attacked five years previously, did not qualify as a protected first amendment speech. Although portions of the officer's speech related to items about which the public was concerned in years past, the news was stale, and the officer's disclosures were made for personal reasons and not to inform the public of matters of general concern. Accordingly, prison authorities could consider these statements in deciding to demote the officer.

The court concluded that the guard's statements to the press concerning a lawsuit which he had instituted because he was being denied promotion for having expressed criticism about prison conditions were made on behalf of the guard, and not "on behalf of the institution," so that he did not violate the rule prohibiting dissemination of material to the press on behalf of the institution. (Federal Correctional Institute at Terminal Island, California)

U.S. Appeals Court
STAFF DISCIPLINE

Fugate v. Phoenix Civil Service Board, 791 F.2d 736 (9th Cir. 1986). Appeals court upholds city police department policy concerning officer conduct and determines that officers did not have a constitutionally protected right of privacy to engage in sexual relations with prostitutes while on duty.

Two married vice officers were discharged in 1978 after an investigation revealed that they had been intimately involved with prostitutes while on duty, that one prostitute was accepting city money from an officer as a paid informant, and that both relationships were carried on openly and publicly. The officers were discharged for violating a police department order which prohibited "conduct unbecoming an officer and contrary to the general orders of the police department."

The officers appealed to the Phoenix Civil Service Board, which reinstated them but did not order back pay for the period of their suspension. The officers filed an action for back pay and injunctive relief in federal district court, asserting violations of their constitutional rights. The district court entered summary judgment for the city, and on second appeal the higher court concurred with the dismissal. While acknowledging that the city's policy was vague, the court found that it was intended to protect the legitimate interests of the police department, and that while the Constitution does not expressly

guarantee the right of privacy, it is considered one of the "liberty" interests protect by the due process clause. (City of Phoenix Police Department, Arizona)

U.S. Appeals Court
DISCRIMINATION

Galvan v. Bexar County, Texas, 785 F.2d 1298 (5th Cir. 1986). A jail guard was a victim of age discrimination. The plaintiff was hired by the county as a detention guard in 1968. He was not a high school graduate and did not possess a GED certificate. When new requirements were passed by the Texas Commission on Law Enforcement Standards and Education, the sheriff was notified in January, 1978, that a GED certificate would be required, but the plaintiff was not notified until after the certification date had passed. After attempting to study for the GED exam, he submitted a letter of resignation stating that he believed he was qualified for his duties but could not pass the test. The commission later passed a "grandfather clause" which would have exempted the plaintiff from the requirement, but the sheriff refused to reinstate him upon request. The lower court found that the county had discriminated against the plaintiff in violation of the Age Discrimination in Employment Act of 1967. On appeal, the U.S. Court of Appeals for the Fifth Circuit affirmed the lower court finding. (Bexar County Jail, Texas)

U.S. Appeals Court
PRISONER ACCOUNTS

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)

State Court
STAFF 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. (Department of Corrections, New York)

U.S. District Court
PRISONER ACCOUNTS

Ruley v. Nevada Bd. of Prison Com'rs., 628 F.Supp. 108 (D. Nev. 1986). A prisoner was properly assessed restitution for medical expenses incurred by the state following his assault of another prisoner. "Freezing" of his accounts was upheld.

A prison disciplinary committee found a prison inmate guilty of assaulting another inmate and assessed restitution against him for medical expenses incurred by the state as a result of the assault. The prisoner's inmate trust fund account was frozen. The prisoner brought a civil rights action seeking declaratory judgment establishing the unconstitutionality of state legislation and regulations under which restitution was awarded.

The federal district court held that: (1) although the prison procedure which authorized the freeze of the inmate's account went beyond the Board of Prison Commissioners' authority when it was promulgated, the Nevada legislature, in effect, ratified the procedure by amendment made to the enabling statute; (2) the prisoner had no basis for civil rights action; and (3) the prisoner was provided a meaningful opportunity to refute the case against him.

The court ruled that the Nevada Board of Prison Commissioners, as an agency of the state, was entitled to dismissal of the civil rights action against it, based on sovereign immunity.

The court affirmed that the full panoply of rights afforded criminal defendants need not be provided in a disciplinary proceeding. Thus, a judicial-style evidentiary hearing is not required. What must be furnished is notice of the case and a meaningful opportunity to meet it.

The prisoner, according to the court, was provided with a meaningful opportunity to refute the case against him, and thus was not denied due process in prison disciplinary proceedings, which resulted in the freezing of his inmate's trust fund account in order to satisfy the requirement that he pay $3,000 to the state as restitution for medical expenses incurred by the state as a result of his assault on another inmate. (Nevada State Prison)

U.S. District Court
PRISONER ACCOUNTS

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 the 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. The petition was 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
HARASSMENT

Snell v. Suffolk County, 782 F.2d 1094 (2nd Cir. 1986). Federal courts find correctional employees subjected to racial harassment, award damages, and order administrative actions. Sixteen black and hispanic correctional officers filed suit against the county sheriff under Title VII, alleging racial discrimination in employment. A federal district court judge found the county liable for failure to correct a racially hostile work atmosphere. The district court jury found for each of three plaintiffs who had been publicly humiliated, awarding a total of $11,500. The district court judge concluded that the employees had been "subjected to vicious, frequent and reprehensible instances of racial harassment" that deprived them of their Title VII rights to a working environment which is free from racial harassment. The judge ordered the warden to appear before all correction officers and "declare that the County will not tolerate any correction officer's action discriminating against another correction officer because of his or her minority status."

The judge also instructed the warden to forbid the use of racial epithets, the posting or distribution of derogatory bulletins, mimicking officers in stereotypical fashion, and the use of racial, ethnic or religious slurs and humor. The district court ordered the warden to tell employees that such behavior would result in prompt and severe discipline. The appeals court affirmed. (Suffolk County Sheriff Department/Jail, Massachusetts)

State Court
EMPLOYEE QUALIFICATIONS

State Correctional Inst. v. Nelson, 503 A.2d 116 (Pa. Cmwlth. 1986). Prison officials were not at fault for a female trainee's lack of notice that she had only two chances to pass a handgun test. Her voluntary absence from class on the day the instructor orally informed trainees of the qualifications was the reason she did not receive the information, ruled the Commonwealth Court of Pennsylvania. The applicant underwent probationary training for one month, completing all training requirements except the handgun qualifying test, which she failed to pass. The test was introduced just prior to her employment. About a month after failing the first test, she took another test, which she again failed. She was the only member of her class who failed the two tests. The court upheld her dismissal, finding no discrimination in that oral notice was given at class, and that she missed hearing about the qualifications due to her absence. (State Correctional Institution at Graterford, Bureau of Correction, Pennsylvania)

U.S. Appeals Court
DISCRIMINATION

Thorne v. City of El Segundo, 802 F.2d 1131 (9th Cir. 1986). City officials are immune from liability in this sex discrimination case because the law on unregulated, unrestrained employer inquiries into personal sexual matters was not clearly defined at the time, says the Ninth U.S. Circuit Court of Appeals. Deborah Thorne filed suit against the city of El Segundo, Calif., when the city refused to hire her as a police officer based on results of polygraph testing about her past sexual activities. Thorne alleged the city discriminated against her in the application process and violated her constitutional right of privacy. Although the trial court found Thorne had been discriminated against, she was awarded only $812 back pay from the date of refusal until the date she voluntarily resigned her position as clerk typist. Thorne appealed this award, and the appeals court determined the back pay should, in fact, have been continued until the date of the judgment.

The appellate court also concluded the city officials should not be found liable for their actions, because the constitutional right to privacy and free association, which was allegedly violated by conducting a broad, unregulated inquiry into her off duty sexual activities, was not a "clearly established statutory or constitutional right of which a reasonable person would have known." Although Thorne's case did establish this right, the court held the officials, at the time they questioned Thorne, could not be expected to "predict the future course of constitutional law." Ruling the city officials immune from liability, the court remanded the case to the trial court for determination of the appropriate back pay. (El Segundo Police Department)

U.S. Appeals Court
WORKING CONDITIONS

Walker v. Rowe, 791 F.2d 507 (7th Cir. 1986), cert denied, 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. Training which was provided was poor. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
WORKING CONDITIONS

Washington v. District of Columbia, 802 F.2d 1478 (D.C.Cir. 1986). Reckless failure of state officials to remedy unsafe prison conditions did not deprive a correctional officer of his constitutional rights, according to a recent U.S. Court of Appeals decision. Preston Washington was attacked and severely injured by a prisoner while employed as a correctional officer at the Lorton Reformatory. Washington sought $20 million damages alleging reformatory officials had been warned of unsafe conditions at Lorton and were under court order to correct them. By failing to take remedial action the officials violated his constitutional rights, he argued. The court noted, however, that not all injuries inflicted by persons acting under color of state law violate constitutional rights. While Washington had a liberty interest in "personal security," the officials sued had no constitutional duty to protect his security. Washington argued that prison guards have the same constitutional rights as prisoners. The court disagreed, distinguishing that prisoners are in custody involuntarily and prison officers work voluntarily. Therefore, the state had no constitutional obligation to protect Washington from the hazards inherent in that occupation. (Lorton Reformatory, District of Columbia)

State Appeals Court

Capitol City Lodge v. Ingham County, 399 N.W.2d 463 (Mich. App. 1986). During a labor dispute with jail officers, a county moved to exclude jail security officers from required arbitration between the county and the police union. The Michigan Employment Relations Commission denied the motion, and the county appealed. The appeals court found no evidence that the strike would pose a threat to the community and also held that county jail security officers were not included in the same law that provided for compulsory, binding interest arbitration of labor disputes in public police and fire departments. (Ingham County Jail, Michigan)

1987

U.S. District Court
CONTRACT SERVICES

Henderson v. Harris, 672 F.Supp. 1054 (W.D. Ill. 1987). A state correctional facility prisoner who was temporarily housed at a federal institution so he could testify in a federal trial, claims that while he was there, he contracted hemorrhoids. He alleged that he was repeatedly denied access to medical personnel and care, and that he was deprived of treatment which a physician had prescribed as medically necessary. The inmate also alleged that prescribed medicine was taken from him, and he was operated on without his consent by a clinician who had no license to practice surgery nor any relevant surgical experience. The plaintiff was also accused of having a venereal disease. The federal court allowed the inmate to proceed with his claims against the prison warden and his lieutenant. Since the standard of care necessary had been established years earlier in

Estelle v. Gamble, 429 U.S. 97, (1976), the court said the defendants were not entitled to qualified or absolute immunity from an allegation that they deprived the inmate of seriously needed medical treatment. Because the duty to provide medical care was nondelegable, and the fact that the government had contracted with a private agency to perform these services would not relieve it of liability, it approved the suit against the U.S. government for alleged negligence in providing medical care under the Tort Claims Act, 28 U.S.C. Section 1346 (b) and 2674. Contracting out aspects of prison administration or services will not lead to lessened exposure to governmental liability. Finally, the federal court stated that the Tort Claims Act did not give it jurisdiction to hear a defamation complaint. (Metropolitan Correctional Center, Chicago, Illinois)

U.S. Appeals Court
RECORDS

Hernandez v. Johnston, 833 F.2d 1316 (9th Cir. 1987). A prisoner challenged state prison officials alleging that certain statements in his prison file were false and deprived him of liberty without due process. The inmate argued that the statements that classified him as a "violent offender" and stated that he needed a "structured setting" were incorrect since the burglary offense for which he was incarcerated was nonviolent. The inmate felt that, without due process findings, the court should "put a stop to the prison policy of using pseudo-legalistic, psychological, etc., terms against prisoners." The appeals court ruled that even if a state Criminal Records Privacy Act created a liberty interest in accurate prison record information, it applied to criminal history record information, not opinions or evaluations. The court also held that the prisoner had no state or federal constitutional right to a particular classification status. Finally, neither a due process clause nor Washington law creates a liberty interest in prison education or rehabilitation classes. (McNeil Island Corrections Center)

State Appeals Court
POLICIES/
PROCEDURES

Jordan v. Department of Corrections, 418 N.W.2d 914 (Mich. App. 1987). A state penal inmate filed a lawsuit claiming he had been denied a "reasonable quantity of postage stamps" to which he was entitled under a department of corrections rule that provided free postage to inmates. It was then shown that the plaintiff was not indigent and therefore not entitled to free postage stamps under the language of a department of corrections policy directive. A state appeals court found that a policy directive regarding free postage for inmates was not promulgated as a rule under the state's Administrative Procedures Act. State law prohibits adopting a guideline or policy directive in lieu of a rule to avoid the procedural requirements. The policy directive, the court found, was not a "mere interpretive statement or explanatory guideline" exempt from the law's requirement, since it contradicted the general rule concerning providing of free postage to inmates. The inmate was awarded the amount of postage he would have otherwise received. (Michigan Department of Corrections)

U.S. Appeals Court
POLICIES/
PROCEDURES

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

1988

U.S. Appeals Court
POLICY/PROCEDURE

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. The investigation into the detainee's suicide was adequate and did not violate the mother's constitutional rights. 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)

State Appeals Court
RECORDS
WORKING CONDITIONS

Mendez v. Superior Court (Peery), 253 Cal.Rptr. 731 (Cal.App. 5 Dist. 1988). An employee of a sheriff's office sued a deputy and the county for intentional and negligent assault and battery and intentional and negligent infliction of emotional distress in connection with a deputy's alleged sexual assault upon an employee. The county filed a motion requesting the discovery of the employee's sexual history with others at the sheriff's department, and the deputy filed a motion requesting discovery of the employee's sexual conduct with persons other than the deputy. The superior court denied the defendants' motions, and the defendants filed petitions for writs of mandate. Following its issuance of an order to show cause, the court of appeals, discharged the order, and denied the petition, finding that the fact that the employee's alleged emotional distress did not justify the defendants' requested discovery of the employee's sexual privacy. The discovery was not justified by the claim that the employee's alleged consensual sexual conduct with other employees might have some bearing on the applicability of the exclusive remedy doctrine of the workers' compensation system. The defendants' claim that the employee's sexual history bears upon her credibility did not justify the discovery. (Merced County Sheriff's Department, California)

State Appeals Court
RECORDS

Rayfield v. S.C. Dept. of Corrections, 374 S.E.2d 910 (S.C.App. 1988). Decedents' administrator brought a wrongful death action against the Department of Corrections and Department of Parole and Community Corrections, along with various officers and servants of departments, after a released prisoner killed the decedents hours after the prisoner's release. The court of common pleas granted summary judgment for the defendants, and the administrator appealed. The appeals court, affirming the decision, found that statutes assigning the responsibility for management and control of the Department of Corrections and the Department of Parole and Community Corrections, and providing for the general keeping of records on prisoners, created no special duty of corrections officers and parole officers to members of the public to guard against violent crimes by released prisoners. The corrections officers did not have an affirmative duty to protect the decedents from the released prisoner even though the officers may have known that the released prisoner was drug addicted and potentially violent, as any special relationship ended once the custody of the released prisoner ended. (South Carolina Department of Corrections)

U.S. Supreme Court
CONTRACT SERVICES

West v. Atkins, 108 S.Ct. 2250 (1988). Private doctor who provides medical services to inmates under contract can be held liable under civil rights statute. The Supreme Court ruled that a private doctor who renders medical services to prison inmates pursuant to a contract with the state acts "under color of state law" pursuant to the Civil Rights Act, 42 U.S.C.A. Section 1983, and thus can be sued under that Act for services that fall below constitutional minimum standards under the cruel and unusual punishment or deliberate indifference aspects of the Eighth Amendment. The fact that such a doctor is an independent contractor rather than a state employee does not change this result: "It is the physician's function within the state system, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the State." An inmate brought this civil rights action against North Carolina officials and a physician who was under contract with the state to provide medical services. The physician, a private practitioner under contract with North Carolina to provide orthopedic services at a state-prison hospital on a part-time basis, treated the inmate for a leg injury sustained while he was incarcerated at a state prison. The inmate was barred by state law from employing or electing to see a physician of his own choosing. Alleging that he was given inadequate medical treatment, he sued in federal district court under 42 U.S.C. Section 1983 for violation of his Eight Amendment right to be free from cruel and unusual punishment, relying on **Estelle v. Gamble**, 429 U.S. 97, 97 S.Ct. 285. Justice Blackmun wrote the majority opinion for the Supreme Court, which held that a physician who was under contract with the state to provide medical services to inmates at a state prison hospital on a part-time basis acted under the color of state law, within the meaning of Section 1983, when he treated the inmate, and such conduct was fairly attributable to the state. The Supreme Court noted that physicians are not removed from the purview of a Section 1983 action simply because they are professionals acting in accordance with professional discretion and judgment. However, there is no rule that professionals are subject to suit under Section 1983 unless they were exercising custodial or supervisory authority. According to the Court, it is a physician's function within a state system, providing treatment to prison inmates, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the state under Section 1983. The fact that the physician's employment contract with the state did not require him to work exclusively for the prison in treating prisoners did not make him any less a state actor than if he performed duties as a full-time, permanent member of the state prison medical staff. It was the physician's function while working for the state, not the amount

of time he spent in performance of those duties or the fact that he might be employed by others to perform similar duties, that determined whether he was acting under the color of state law. The Court also held that contracting out prison medical care does not relieve the state of its constitutional duty to provide adequate medical treatment to those in its custody, and does not deprive the state's prisoners of a means of vindication of their eighth amendment rights under Section 1983. Finally, the Supreme Court noted that the fact that a state employee's role parallels one in the private sector is not, by itself, reason to conclude that the employee is not acting under color of state law within the meaning of Section 1983 in performing his duties.

1989

U.S. Appeals Court
CONTRACT SERVICES

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

U.S. District Court
WORKING CONDITIONS

Smith v. Dodrill, 718 F.Supp. 1293 (N.D. W.Va. 1989). Prison guards injured during a prison takeover riot brought a civil rights action against the Commissioner of West Virginia Department of Corrections. The Commissioner moved for dismissal of action. The district court granted the motion and found that the guards, who alleged that the Commissioner failed to provide adequate facilities and personnel to properly provide for their security, safety and care, failed to establish deprivation of a federal right, and therefore failed to state a cause of action under the federal civil rights statute against the Commissioner for injuries sustained during the riot. While the due process clause forbids the state itself from depriving individuals of life, liberty, and property without due process of law, its language cannot fairly be read to impose affirmative obligation on the state to ensure that those interests do not come to harm through other means. The guards were not in custody nor compelled to be guards, but instead enlisted for service. A West Virginia statute imposing a duty upon employers to maintain places of employment in reasonably safe condition did not create a contractual property interest for the employee which would allow the employee to bring a federal civil rights action against the employer for violation of that duty. (West Virginia State Penitentiary, Moundsville)

State Appeals Court
WORKING CONDITIONS
HARASSMENT

State v. Human Rights Com'n., 534 N.E.2d 161 (Ill.App. 4 Dist. 1989). The Illinois Human Rights Commission determined that a state employee had been subjected to sexual harassment by her immediate supervisor in the state corrections department and that she was discharged in retaliation for opposing his sexual harassment, and the employer appealed. The appellate court, affirming the decision, found that evidence supported a determination that the supervisor's use of gender specific sexual terms in reference to the employee and others constituted conduct of a sexual nature which was harassing. The evidence sustained a finding that the employee was discharged in retaliation for opposing sexual harassment. An award of lost benefits in addition to back pay was not an abuse of discretion. The supervisor's use of gender specific sexual terms in reference to the state employee, her daughter and other women constituted conduct of a sexual nature interfering with the employee's work performance which created an intimidating, hostile or offensive working environment in violation of sexual harassment provisions of the Human Rights Act, given the context in which comments were made, the nature ad frequency of comments and the supervisor's failure to desist despite repeated requests from the employee to do so. The employee was ordered reinstated and awarded $81,465.27 in back pay, $23,131.50 for lost benefits, $2,160 for medical expenses and $18,068.75 for attorney fees. (Illinois Department of Corrections)

1990

U.S. Appeals Court
HARASSMENT
STAFF DISCIPLINE

Hirschfeld v. New Mexico Corrections Dept., 916 F.2d 572 (10th Cir. 1990). A correctional department employee brought an action against the department alleging sexual harassment and constructive discharge. The U.S. District Court entered judgment for the defendants, and appeal was taken. The court of appeals found that the department was not liable for an officer's sexual harassment of the employee. The officer was not acting within the scope of his employment in his actions toward the typist, the department took remedial action upon learning of the officer's misconduct, and there was no evidence that the officer had any supervisory authority over the typist's position or that he invoked authority over subordinate guards in order to facilitate his harassment of the typist. In addition, it was found that the corrections department employee was not constructively discharged where a reasonable person would not have found the employee's situation so intolerable as to warrant immediate resignation. Although expert testimony linking the employee's depressed state to the harassment was uncontroverted, the court's determination that such evidence was not credible was not clearly erroneous. (Central New Mexico Correctional Facility)

U.S. District Court
POLICIES/
PROCEDURES

Rogers v. Oestreich, 736 F.Supp. 964 (E.D. Wis. 1990). A state prisoner brought a civil rights action against prison employees. The district court found that the state administrative procedures for issuing and processing conduct reports did not give rise to a protectable liberty interest on the part of the prisoner. Some evidence supported the disciplinary committee's findings that the prisoner was guilty of participating in a riot and of attempted battery. A written statement of reasons for the disciplinary committee's decision was constitutionally adequate. (Waupun Correctional Institution, Wisconsin)

1991

U.S. Appeals Court
STAFF DRUG TEST

Ford v. Dowd, 931 F.2d 1286 (8th Cir. 1991). A police officer brought a civil rights action against the police chief and the city, alleging the urinalysis to which he was required to submit was unreasonable. The U.S. District Court granted summary judgment for the defendants, and the officer appealed. The court of appeals found that the police chief could not require the officer to submit to drug testing based on an unsubstantiated rumor that the officer associated with drug dealers where there was no specific allegation that the officer used drugs. In the absence of uniform or systematic random selection of employees subject to drug testing, the government may enforce drug testing of public employees where the employees are chosen only on the basis of a reasonable suspicion. (Pagedale Police Department, Missouri)

U.S. District Court
HIRING/
QUALIFICATIONS
RACIAL
DISCRIMINATION
EMPLOYEE
DISCHARGE

Washington v. Lake County, Ill, 762 F.Supp. 199 (N.D. Ill. 1991). A former sheriff's department jailer brought an action against the county, the department, and his superior in his individual capacity alleging a racially discriminatory discharge. On the defendant's motion for summary judgment, the U.S. District Court found that the jailer was not entitled to relief under Title VII on his claim, where the employer, following discharge, discovered that the jailer had misrepresented his criminal record on his employment application. The jailer's subjective intent in filling out his application form did not detract from an undisputed fact that an answer he gave to a conviction question was objectively false, and it strained credulity to believe that knowledge of his prior convictions would not have affected the hiring decision. (Lake County Sheriff's Department, Illinois)

1992

U.S. District Court
STAFF DRUG TEST

American Fed. of Gov. Employees v. Barr, 794 F.Supp. 1466 (N.D. Cal. 1992). A union brought an action to enjoin an allegedly unconstitutional drug testing program for Federal Bureau of Prisons employees. On the defendants' motion for summary judgment, the district court found that the Bureau could conduct a random urinalysis only of employees in primary law enforcement positions with access to firearms, licensed physicians and dentists with regular patient contact, and employees in primary law enforcement positions in regular direct contact with inmates. According to the court, the Bureau may constitutionally test those employees in primary law enforcement positions who apparently cause accidents or engage in hazardous practices involving personal injury that requires prompt medical treatment or resulting in more than $2,000 in damages. However, the testing following any accident involving personal injury regardless of extent would leave too much discretion to local officials. In addition, the standard allowing testing where the same employee has had more than one accident or unsafe practice during any twelve month period was incurably vague. Reasonable suspicion of off-duty drug use or impairment could serve as grounds for testing only of the same employees as are subject to random testing; other employees could be tested on reasonable suspicion of on-duty drug use or impairment. (The United States Department of Justice for Employees of the Federal Bureau of Prisons)

U.S. Appeals Court
PRISONER
ACCOUNTS

Foster v. Hughes, 979 F.2d 130 (8th Cir. 1992). Inmates brought a Section 1983 action claiming that Missouri officials arbitrarily denied them the right to place their monies in private, interest-bearing accounts. The U.S. District Court awarded summary judgment to the prison officials and the inmates appealed. The court of appeals, affirming the decision, found that the prison inmates failed to state a procedural due process claim; the application of the rule did not depend upon facts and circumstances surrounding each inmate. Furthermore, Missouri regulations did not violate substantive due process rights as the prohibition was necessary to deter escapes by preventing inmates access to available funds outside prison, to prevent inmate fraud upon those outside prison, and to prevent the use of inmate funds for illegal purposes. The prison provided inmates with an alternate method of earning interest on their funds, and providing inmates access to private accounts would seriously burden prison operations. (Missouri Department of Corrections)

U.S. Appeals Court
RECORDS

Sellers v. Bureau of Prisons, 959 F.2d 307 (D.C. Cir. 1992). An inmate filed an action under the Privacy Act against the Bureau of Prisons and Parole Commission, claiming that the agencies maintained incorrect information in the inmate's files. The United States District Court granted summary judgment for the agencies, and the inmate appealed. The appeals court, reversing and remanding, found that the agencies did not satisfy the requirements of the Privacy Act by simply noting in the inmate's files that he disputed some of the information contained therein. The challenged information was capable of being verified. (District of Columbia)

U.S. Appeals Court
CONDITIONS
INSPECTION
STAFFING LEVELS

Williams v. McKeithen, 963 F.2d 70 (5th Cir. 1992). A parish sheriff moved to vacate a district court order directing the inspection of parish jails by a court-appointed expert. The United States District Court denied the motion, and appeal was taken. The court of appeals, affirming the decision, found that the federal district court had authority, pursuant to a consent decree in which the parish had agreed to limit the jail population, to order the inspection of parish jails by its experts. This was in order to determine the number of inmates which could be housed in the jails on a permanent basis, the number of guards and support personnel required in the jails, whether any repairs or other renovations were required to meet fire, health and constitutional standards, and any other information which would aid the court in setting population limits at the jails. (Louisiana)

1993

U.S. District Court
POLICY/
PROCEDURE

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

U.S. District Court
COMMISSARY
COMMISSION
CONTRACT
SERVICES

Griffin-El v. MCI Telecommunications Corp., 835 F.Supp. 1114 (E.D.Mo. 1993). 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)

U.S. Appeals Court
DISCRIMINATION
EMPLOYEE
QUALIFICATIONS

Hayes v. North State Law Enforcement Officers Ass'n., 10 F.3d 207 (4th Cir. 1993). Nonminority police officers sued a city contending that its race-based promotion policy for police sergeants violated the equal protection clause. The U.S. District Court granted partial summary judgment for the police officers after concluding that the department's promotion practices violated the equal protection clause, and enjoined the city from using race-based criterion for its employment decisions. The city appealed. The appeals court, affirming in part, vacating in part, and remanding, found that the opinion of the chief of police that effective law enforcement required racial diversity justifying a race-based promotion policy was not, alone, sufficient to support promotion of police sergeants based on race. In addition, reports prepared in response to the urban riots in the city of Detroit in the 1960's were not sufficient to support the city's claim about the need for diversity in effective law enforcement. It was also found that the city's race-based promotion policy was not narrowly tailored to accomplish the asserted purpose of achieving effective law enforcement through diversity. However, an injunction issued by the district court enjoining all use of racially-based criteria by the city in its employment decisions was broader than necessary to give police officers who were denied a promotion because they were nonminority officers complete relief. The district court was required to issue an injunction properly tailored to only the wrong found in the case, which was the use of racial preferences as criteria for promotions to the rank of police sergeant. (Charlotte Police Department, North Carolina)

U.S. District Court
POLICY/PRO-
CEDURE

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
CONTRACT
SERVICES

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

U.S. District Court
DISCRIMINATION
HARASSMENT

Stafford v. State, 835 F.Supp. 1136 (W.D.Mo. 1993). A corrections officer brought an action against the State of Missouri and employees of the Missouri Department of Corrections, claiming sex discrimination and sexual harassment. After a jury returned a verdict for the corrections officer on Section 1983 claims against two supervisors, various motions were filed. The district court found that one supervisor was entitled to judgment as matter of law, and that evidence supported the finding that another supervisor engaged in sexual harassment of the corrections officer. The supervisor made the corrections officer's working conditions intolerable on the two days a week they worked together, thereby creating a sexually hostile atmosphere in violation of the Fourteenth Amendment. The court also found that evidence did not support a finding that the corrections officer was constructively discharged by the supervisor's sexual harassment. The supervisor's conduct was sporadic and, at most, distasteful. The corrections officer and supervisor ceased working together several months before the corrections officer's resignation, and the corrections officer testified that she was not subjected to any harassment or discrimination at her new position. The court found that the state was liable under Title VII for sexual harassment committed by the supervisor. (Missouri Dept. of Corrections)

U.S. Appeals Court
POLICIES/
PROCEDURES

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)

U.S. District Court
DISCRIMINATION
HARASSMENT

Anthony v. County of Sacramento Sheriff's Dept., 845 F.Supp. 1396 (E.D. Cal. 1994). A black female deputy sheriff brought a Section 1983 action against a county, county sheriff's department, supervisors, co-workers, and a civilian jail employee, alleging sexual and racial harassment and retaliation for her defense of black inmate rights. The defendants moved to dismiss. The district court found the deputy sheriff sufficiently alleged an action under color of law as required to state a cause of action under Section 1983 arising from retaliation for her defense of black inmate rights. The job of a deputy sheriff includes the responsibility for the well-being of inmates. The defendants allegedly abused the position and responsibility given to them by the state in retaliating for a speech protesting the improper treatment of the inmates. In addition, the deputy sheriff sufficiently alleged an action under color of law as required to state a cause of action under Section 1983 arising from racial and sexual harassment by the defendants. The complaint depicted the work environment made racially and sexually hostile by related attacks on the plaintiff personally, on the abilities of black law enforcement personnel generally, and on black inmates. The alleged pattern of harassment directly involved discriminatory assertion of law enforcement authority. (Sacramento County Sheriff's Department, California)

U.S. Appeals Court
CONTRACT
SERVICES

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

U.S. District Court
CONTRACT
SERVICES

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

U.S. Appeals Court
STAFF CONTRACTS

Rumsey v. N.Y. State Dept. of Corr. Services, 19 F.3d 83 (2nd Cir. 1994) U.S. Cert. denied 115 S.Ct. 202. Correctional employees brought an action against the New York State Department of Correctional Services challenging rescheduling of employees' pass days to coincide with their military reservist obligations. The U.S. District Court entered judgment in favor of the employees and awarded damages. On cross appeals, the court of appeals affirmed in part, reversed in part and remanded. The appeals court found that the alteration of pass days to correspond with military reservist obligations violated the seniority provisions of the collective bargaining agreement. However, the alteration of pass days did not deprive the employees of "incident or advantage of employment," in violation of the Veterans' Reemployment Rights Act. The employees were not entitled to recover pay for days on which they used accrued personal leave or sick time rather than notifying the Department of their military duties. In addition, even if employees had stated a substantial equal protection claim, which they did not, enforcement provisions of the Veterans' Reemployment Rights Act supplanted any Section 1983 claim, precluding an award of attorney fees under Section 1988. (New York State Department of Correctional Services)

U.S. District Court
CONTRACT
SERVICES

Smith v. U.S., 850 F.Supp. 984 (M.D.Fla. 1994). Female inmates at a community treatment center brought an action against the federal government, a contractor that operated the center, the center manager, and the contractor's employee, alleging violation of equal protection and cruel and unusual punishment. The contractor and manager moved to dismiss. The district court found that the contractor was entitled to raise qualified immunity as a defense. The manager's motion was denied. (Orange County Community Treatment Center, Florida)

U.S. District Court
PRISONER ACCOUNTS

Berryman v. Epp, 884 F.Supp. 242 (E.D. Mich. 1995). On a motion to tax costs in a prisoner's civil rights action, the district court found that the prisoner failed to meet his burden to prove that he was unable to pay costs incurred by the defendant, despite his assertion without documentary support that he was unable to pay an award because he did not have a prison job and because he needed the amounts of money deposited in his prison account throughout the year. The court ordered that the present award of costs be removed from any prison account balance over $50 and that, if the amount withdrawn would cause the balance to fall below $50, no more than 20 percent of the account balance would be withdrawn in any one month until the award of $49.40 is reached. (Michigan Department of Corrections)

U.S. District Court
DISCRIMINATION

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
CONTRACT SERVICES

Citrano v. Allen Correctional Center, 891 F.Supp. 312 (W.D.La. 1995). A civil rights case was filed in forma pauperis by pro se prisoners alleging that they were assaulted by prison officials while at a correctional facility operated by a private contractor (Wackenhut Corporation). The district court granted the defendants' motion to dismiss, finding that officials at a corrections facility operated by a private contractor were entitled to the same qualified immunity afforded to state prison officials, and that the facility was an arm of the state and was therefore immune from suit under the Eleventh Amendment. The court noted that the mere fact that the contractual ties of the private prison officers were different than that of state employees did not provide a logical basis for denying those workers the benefit of qualified immunity. The state legislature had indicated that private contracts for corrections are for the safety and welfare of the people of the state, as opposed to local interests; Eleventh Amendment immunity extends to state agencies that act as arms of the state, but does not extend to counties, cities or other political subdivisions of the state. In determining whether a suit against a state agency or similar agency is in fact a suit against a state, the court identified six factors that must be determined: (1) whether state statutes and case law characterize the agency as an arm of the state; (2) the source of funds for the entity; (3) the degree of local autonomy the entity enjoys; (4) whether the entity is concerned primarily with local, as opposed to statewide, problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether the entity has the right to hold and use property. (Allen Correctional Center, Louisiana)

U.S. District Court
RECORDS
STAFFING LEVELS

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 deficiencies with the medical records maintained by the Department, including: disorganized, untimely and incomplete filing of medical records; incomplete or nonexistent treatment plans; and failure to send medical records with inmates when they were transferred. The court noted that it was the Department's responsibility to take reasonable steps to implement policies that would aid in obtaining medical information from counties from which inmates were transferred.

The court found that evidence established that the Department was significantly and chronically understaffed in the area of mental health employees. The court found that custody staff played inappropriate roles in decisions concerning involuntary medication at some institutions. Evidence supported the finding that custodial staff were inadequately trained in signs and symptoms of mental illness, supporting allegations that disciplinary and behavior control measures were inappropriately used against mentally ill inmates. The three-hour course received by all new correctional officers, and additional in-service training at the institution level, were not sufficient to prevent some officers from using punitive measures to control inmates' behavior without regard to the cause of the behavior.

The court supported the decision of the magistrate to refrain from specifying the exact mechanism for screening of inmates, the number of staff to be hired, the specific level of competence to be possessed by staff, the precise methods of medication management, and the manner of maintaining medical records. The magistrate appropriately proposed leaving matters of creation of protocols, standards, procedures and forms to be developed to the defendant, in consultation with court-appointed medical experts. (California Department of Corrections)

U.S. District Court
RECORDS

Ennis v. Teague, 882 F.Supp. 1023 (M.D. Ala. 1995). An inmate filed a civil rights action alleging denial of access to his prison records. On a motion to dismiss for failure to state a claim, the district court found that the inmate had no constitutional right to inspect his prison records or to a free copy of his prison records. However, the inmate could obtain copies of appropriate records upon payment of a reasonable copying fee which the inmate would have to pay notwithstanding the fact that he was proceeding in forma pauperis and pro se. (Alabama Correctional Facility)

U.S. Appeals Court
INSPECTION
PLANNING

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
EMPLOYEE QUALIFICATIONS
WORKING CONDITIONS

McDonald v. State of KS, Dept. of Corrections, 880 F.Supp. 1416 (D.Kan. 1995). A former correctional officer sued a state, the Department of Corrections, and its representatives, for disability discrimination and negligent and intentional infliction of emotional distress. On the defendants' motion for summary judgment, the district court found that the former correctional officer failed to meet the burden of proving that the requested accommodation for his heart and other medical problems was reasonable. He requested that he rotate among positions in which he would have little contact with inmates, no occasion to respond in situations of physical emergency, and no need to stand, walk, lift, bend, squat or climb stairs. There was no existing rotation and no individual positions were vacant. The court also found that, under Kansas law, the former correctional officer could not recover for tort of outrage or intentional infliction of emotional distress, as there was no conduct that could be regarded as extreme and outrageous. The warden had made extraordinary efforts to help him save his job while meeting legitimate correctional and security needs of the facility, and the former correctional officer neither alleged nor proved that he suffered extreme and severe emotional distress. Also, under Kansas law, the former correctional officer could not recover for negligent infliction of emotional distress, where he alleged no negligent conduct. (Lansing Correctional Facility, Kansas)

U.S. District Court
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
COMMISSARY

Hudgins v. DeBruyn, 922 F.Supp. 144 (S.D.Ind. 1996). Inmates brought a § 1983 action against prison officials challenging a policy modifying the manner in which inmates could obtain over-the-counter (OTC) medication. The district court held that the policy did not constitute cruel and unusual punishment. The court found that requiring inmates to purchase OTC from their own funds did not violate the Eighth Amendment, noting that if an inmate can afford medicine but chooses to apply his resources elsewhere, it is the inmate, not the official, who is indifferent to a serious medical need. The court noted that inmates' serious medical needs were met, whether they were indigent or not. (Indiana Reformatory)

U.S. District Court
EMPLOYEE UNION

Israel v. Abate, 949 F.Supp. 1035 (S.D.N.Y. 1996). A corrections officer union and its President sought declaratory judgment to enjoin the Department of Correction (DOC), city officials and the city from prohibiting union members from posting and distributing union fliers at a control building of a correctional facility. The district court granted summary judgment for the defendants, finding that the content of the fliers, which encouraged union members to vote for the continued employment of union officials and warning of the implications of defeat, was not a matter of public concern and therefore was not entitled to First Amendment protection. According to the court, the primary purpose of the fliers was to further internal union interests and did not address the impact of the vote on the DOC or the general public, expenditures of tax money, breaches of public trust, or the integrity of DOC officials. The court ruled that the DOC reasonably restricted the hand distribution of the fliers in the control building--a non-public forum. The court noted that even if the control building was a forum, the restriction was necessary to serve a compelling state interest, and that the union had numerous other fora to disseminate their message, which had been used by the union in the past. The court found that the officials were entitled to qualified immunity. (Rikers Island Complex, New York City)

U.S. Appeals Court
PRISONER ACCOUNTS

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
EMPLOYEE DISCIPLINE

Penland v. Long, 922. F.Supp. 1085 (W.D.N.C. 1996). A discharged jailer and shift supervisor brought a civil rights action against the sheriff who discharged them. The district court denied summary judgment to the sheriff, finding that the plaintiffs had a property interest in their protected employment and that the rights allegedly violated by the sheriff were clearly established at the time. The court cited a statute which created a personnel advisory board for the sheriff's department to determine facts and make recommendations to the sheriff in cases of employee suspension or dismissal. The court found that the sheriff implicated the plaintiffs' liberty interests when he made a statement that allegations of a sexual assault had been made by an inmate, that the jailer and supervisor had been dismissed, and that the matter was under investigation. According to the court, these statements implied that the assault occurred and that the jailer and shift

that allegations of a sexual assault had been made by an inmate, that the jailer and supervisor had been dismissed, and that the matter was under investigation. According to the court, these statements implied that the assault occurred and that the jailer and shift supervisor were involved. The court found that a jury could find that the sheriff acted with reckless disregard for the truth by discharging the plaintiffs while the state was conducting its investigation, and before it was learned that the inmate who had made the allegations had a history of treatment for a mental disorder and a history of making false allegations of sexual abuse. (Buncombe County Jail, North Carolina)

U.S. Appeals Court
RECORDS

Langston v. Peters, 100 F.3d 1235 (7th Cir. 1996). An inmate sued numerous prison officials under § 1983 alleging they violated his Eighth Amendment rights by failing to protect him from being raped by another inmate. The district court granted summary judgment for the defendants and the appeals court affirmed, finding that the failure of the prison's Offender Tracking System to include information of the other inmate's prior assault was not deliberate indifference. The court held that officials were not liable for placing the inmate with the other inmate in a double cell, absent evidence that the inmate was raped in retaliation for his cooperation with prison officials, or evidence that there was a serious risk of sexual assault. (Joliet Correctional Center, Illinois)

U.S. District Court
PRISONER ACCOUNTS

Reynolds v. Wagner, 936 F.Supp. 1216 (E.D.Pa. 1996). County prison inmates filed a class action civil rights suit challenging a policy that charges inmates for their medical care. The district court held that fee for medical services programs do not, per se, violate the Eighth and Fourteenth Amendments because such programs do not necessarily involve arbitrary and burdensome procedures and do not necessarily result in interminable delays and outright denials of medical care. The court held that the county's fee program did not violate the First, Eighth or Fourteenth Amendments, or due process. The county charged $3.00 for a nurse's visit and $5.00 for a doctor's visit, and provided that if an inmate could not afford the fees his account was charged with a negative balance; the county could also seek to recover unpaid debts after discharge under the policy. The court found that assessing negative balances against accounts that did not have sufficient funds at the time of service did not violate Due Process where inmates could challenge individual fee assessments and where inmates were made aware of the right to challenge assessments by a description in the inmate handbook. The court held that a prison policy of charging for photocopying--coupled with charges for medical visits--did not violate the First Amendment. Prisoners were not forced to choose between taking their cases to court and adequate health care because a prison policy guaranteed that legal mail would be sent, and allowed an inmate with insufficient funds a small supply of personal hygiene items, mail supplies and a pencil, and to mail three first class letters per week. (Berks County Prison, Pennsylvania)

1997

U.S. District Court
RECORDS

Armstrong v. U.S. Bureau of Prisons, 976 F.Supp. 17 (D.D.C. 1997). A former inmate sought damages under the Privacy Act from the Bureau of Prisons (BOP) and other defendants because they allegedly denied her right to access and amend her prison records. The district court held that the Privacy Act claim was barred by a two-year statute of limitations and that the former inmate could not maintain a Privacy Act claim against unnamed individuals. According to the court, in order to constitute intentional and willful conduct under the Privacy Act, a violation by a government agency must be so patently egregious and unlawful that anyone undertaking the conduct should have known it was unlawful. The inmate had sought to amend records that are maintained in BOP's Inmate Central Record System. (Federal Medical Center in Lexington, Kentucky, and Federal Prison Camp at Bryan, Texas)

U.S. District Court
RECORDS
STAFF LEVELS

Franklin v. District of Columbia, 960 F.Supp. 394 (D.D.C. 1997). A class of Hispanic prisoners who were or would be incarcerated in correctional institutions operated by the District of Columbia sought injunctive and declaratory relief for alleged violations of the First, Fifth, and Eighth Amendments under § 1983. The district court held that the District's failure to provide qualified interpreters for Hispanic prisoners' medical and mental health needs rose to the level of deliberate indifference and violated the Eighth Amendment. The court found no valid penological justification for disclosing a prisoner's medical condition by using correctional officers or other inmates as interpreters in medical encounters. The court noted that to satisfy the Eighth Amendment, a medical facility must be adequately staffed and access to medical services cannot be delayed in a systematic manner due to inadequate staffing. The court found that the District's failure to provide Hispanic prisoners with qualified interpreters at disciplinary proceedings and parole hearings was an affront to due process. However, the court held that while the District did not offer the same programs in Spanish as they offered in English, these programming decisions did not constitute denial of equal protection under the Fifth Amendment, noting that Hispanic prisoners were not barred from participation in prison programs because of their race or national origin. (District of Columbia)

U.S. District Court
RECORDS

McCabe v. Prison Health Services, 117 F.Supp.2d 443 (E.D.Pa. 1997). A state prisoner brought a § 1983 action against medical care providers and medical records personnel. The district court held that the prisoner failed to state a negligence claim against medical records personnel under Pennsylvania law absent a showing that they violated any particular duty to transfer or obtain his records. The prisoner complained that his county prison medical records remained at the county prison, in accordance with medical records regulations in effect at the time, and that inadequate medical information was provided to the state prison to which he had been transferred. (Delaware County Prison, Pennsylvania)

U.S. Appeals Court
PRISONER ACCOUNTS

McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997). A state inmate brought a § 1983 action against a sheriff's department and officials for failing to serve a summons. The district court dismissed the action, and the appeals court affirmed and remanded. The appeals court set out procedures for handling prisoner and nonprisoner in forma pauperis complaints and appeals, finding that the inmate was not deprived of access to courts by the $14.60 charge the sheriff sought for serving the summons. The appeals court found that under the Prison Litigation Reform Act (PLRA), the only issue is whether an inmate pays the entire filing fee at the initiation of a proceeding or over a period of time under an installment plan. Under PLRA, prisoners are no longer entitled to a waiver of fees and costs. The court found that by filing a complaint of notice of appeal, a prisoner waives any objection to a fee assessment by the district court, and waives any objection to the withdrawal of funds from his trust account by prison officials to pay court fees and costs. (Ingham County Sheriff's Department, Michigan)

1998

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. Appeals Court
POLICIES AND PROCEDURES

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 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
POLICIES AND PROCEDURES

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
RECORDS

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 held that the officials demonstrated "manifest ineptitude" in maintaining medical records. The court noted that budgetary limitations or inadequate resources can never be a valid justification for constitutional violations. The court concluded that the system had failed to provide adequate facilities and equipment necessary for the provision of adequate health care of inmates pursuant to acceptable professional standards. But the court noted that despite the findings of the expert, the National Commission on Correctional Health Care had accredited the medical care programs in four prisons and awarded provisional accreditation to four more in 1992. But an expert found noncompliance with at least one essential standard at every accredited facility, and the Department of Health provided the court monitor's staff with credible evidence that employees had falsified documents in support of accreditation. (Administration of Correction, Puerto Rico)

U.S. Appeals Court
PRISONER ACCOUNTS

Parrish v. Mallinger, 133 F.3d 612 (8th Cir. 1998). A state prisoner and his wife filed a § 1983 action against three prison officials who seized funds that came into the prisoner's inmate account. The officials had seized the funds to satisfy the prisoner's obligations under the Iowa Victim Restitution Act. After the district court concluded that two officials had violated the prisoner's due process rights, the appeals court remanded for further consideration. The district court granted qualified immunity to the officials and dismissed the wife's claims and the appeals court affirmed. The appeals court held that prison officials' ability to seize money that came into a state prisoner's inmate account from a source outside of the prison, and apply that money to satisfy the prisoner's valid restitution debt, did not violate the prisoner's substantive due process rights. (Iowa State Penitentiary)

1999

U.S. District Court
RECORDS

Advocacy Center v. Stalder, 128 F.Supp.2d 358 (M.D.La. 1999). An advocacy group for the rights of mentally ill persons, formed pursuant to the Protection and Advocacy for Mentally Ill Individuals Act (PAMII Act), sued a state prison seeking release of an inmate's mental health records which were needed in connection with an investigation of the inmate's claims of mistreatment. The district court issued a temporary injunction that provided the records. The district court held that surrender of the records did not moot the action because the situation was capable of arising in other cases. The district court entered judgment for the advocacy group and entered a permanent injunction in response to the unwillingness of the state to modify its policy. The court found that a state law that bars the release of prison inmate records until they have been reviewed by a state court judge violated the advocacy group's right to communicate with the population it was created to serve and the inmate's right of access to court. (David Wade Correctional Center, Louisiana)

U.S. District Court
POLICIES AND PROCEDURES

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. District Court
STAFFING LEVELS

Lewis v. Sheahan, 35 F.Supp.2d 633 (N.D.Ill. 1999). A prisoner who was proceeding pro se, filed a civil rights complaint against a sheriff and jail officials alleging failure to provide medical care. The district court dismissed the prisoner's amended complaint without prejudice, finding that the prisoner's allegation that he waited several months for physical therapy, a CAT scan, and thyroid tests did not state a claim for failure to provide adequate medical care. The court found that the alleged failure of the jail to follow its own policy of staffing five paramedics in a particular division did not state a § 1983 claim for failure to provide adequate medical care, because violations of state law or procedures, in and of themselves, are not cognizable under § 1983. (Cook County Jail, Illinois)

2000

U.S. District Court
CONTRACT SERVICES
POLICIES & PROCED.

Andrews v. Camden County, 95 F.Supp.2d 217 (D.N.J. 2000). A former inmate brought an action alleging that jail officials were deliberately indifferent to his need for medical treatment for a life-threatening infection that caused him to suffer severe injuries and nearly caused his death. The district court declined the defendant's motion for summary judgment, finding that it was precluded by fact issues of whether the inmate's right to adequate medical treatment was violated during his eight days of confinement. The court noted that when contracting for correctional health care services, the county or municipality still remains liable for constitutional deprivations. The court found that jail officials may have knowingly failed to follow their own policy of having a jail medical director, which was essential to the safe functioning of the jail's health services, and may have abandoned a sick call system. (Camden County Correctional Center, New Jersey)

U.S. District Court
EMPLOYEE QUALIF-
ICATIONS
STAFF DISICPLINE

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

U.S. Appeals Court
POLICIES & PROCED.

Chavez v. Cady, 207 F.3d 901 (7th Cir. 2000). A former pretrial detainee brought a § 1983 action against a sheriff, jail administrator, correctional officers and nurse practitioner who supervised the jail clinic, alleging deliberate indifference to his medical needs. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that issues of fact precluded summary judgment for the nurse practitioner and the correctional officers. According to the court, the actions of the nurse practitioner in the treatment of the detainee who had a ruptured appendix may have represented a substantial departure from accepted professional judgment. The appeals court also found that the correctional officers may have been deliberately indifferent by failing to follow the directives of the nurse practitioner. The court noted that the county jail did not have its own written manual of policies for operation of the jail but rather relied on the Illinois County Jail Standards which are issued by the Illinois Department of Corrections. (Henry County Jail, Illinois)

U.S. District Court
POLICY/PROCEDURES

Estate of Cills v. Kaftan, 105 F.Supp.2d 391 (D.N.J. 2000). The estate of a county jail inmate who committed suicide in his cell sued the county and officials under § 1983. The district court held that lower level jail personnel who removed the inmate from a suicide watch were not liable because they acted on statements of a nursing supervisor and social worker that the inmate was no longer suicidal. But the court denied summary judgment for the remaining defendants finding it was precluded by fact issues as to the adequacy of the policy governing suicide watches, that did not require qualified mental health professionals to clear an inmate from a suicide watch. The inmate, who had been sentenced to sixty days in the jail, had a history of depression and attempted suicide. The jail did not have a written suicide policy but the court found that a verbal policy was in effect at the time of the inmate's death. Under the verbal policy, an inmate on suicide watch was: (1) segregated from the general population; (2) checked by a guard every fifteen

minutes; (3) given medical treatment and counseling; (4) dispossessed of clothing and other personal belongings; (5) required to wear a paper gown; and (6) restricted from accessing the commissary, telephone, and from having visitors. (Cumberland County Department of Corrections, New Jersey)

U.S. District Court
POLICIES & PROCED.

Thornhill v. Breazeale, 88 F.Supp.2d 647 (S.D.Miss. 2000). Survivors of a pretrial detainee who committed suicide while in custody brought a § 1983 and wrongful death action. The district court held that a sheriff and deputy did not act with deliberate indifference by placing the detainee in a cell with a non-breakaway shower rod and neglecting to remove his shoes. But the court denied summary judgment on the issue of whether the jail's lack of a written policy for suicide prevention was reasonably related to a legitimate governmental interest. The plaintiffs challenged the lack of a policy relating to the administration of cardiopulmonary resuscitation (CPR) to detainees who attempt suicide, and the lack of a written policy for detection and prevention of suicide. The detainee was jailed awaiting trial for allegedly raping his estranged wife. The sheriff and his staff were aware of the detainee's troubled mental history and that he had threatened suicide on two prior occasions. He was initially placed in the jail's mental holding cell where he was isolated from other inmates. He was placed on suicide watch which, according to an unwritten policy, required him to be checked approximately every fifteen minutes. Items with which he could injure himself, including his shoes, were taken from him. After three days without incident the detainee was moved to a juvenile cell in the same section of the jail that was equipped with a toilet and shower and had a non-breakaway shower rod. He remained on suicide watch. He was given his shoes and allowed to leave his cell to exercise and watch television one morning but a deputy forgot to remove his shoes when placing the detainee back in the cell. The detainee hung himself with his shoelaces from the shower rod. He had been observed alive approximately ten minutes before he was found hanging. After he was found hanging it took a period of time for the officers to open the cell and he was eventually cut down and checked for vital signs. Finding no vital signs no attempts were made to revive him. (Lamar County Jail, Mississippi)

U.S. Appeals Court
PRISONER ACCOUNTS

Washlefske v. Winston, 234 F.3d 179 (4th Cir. 2000). A state prisoner brought a pro se action under § 1983 alleging that prison officials took his property without just compensation when they expended the interest earned from his prison accounts for the general benefit of inmates. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed on other grounds, finding that the prisoner was not deprived of any property for the purposes of a Takings Clause analysis. The appeals court noted that the prisoner's claim that he had a property interest in the interest earned on his prison accounts, and that the state had taken that interest without just compensation, met prudential ripeness requirements since the State's use of the interest was uncontroverted and the amount was readily calculable. But the court found that the prisoner's limited right to the funds in his prison account did not derive from any traditional principle of common law, but from state laws that created limited property rights for penological purposes. (Powhatan Correctional Center, Virginia)

2001

U.S. Appeals Court
TELEPHONE

Arsberry v. Illinois, 244 F.3d 558 (7th Cir. 2001). Prison and jail inmates, inmates' families, and a public-interest law firm brought an action against a state, state agencies and officials, and telephone companies, challenging the practice by which prisons and jails each granted one telephone company the exclusive right to provide inmate telephone service in exchange for a portion of the revenues generated. The suit was brought under § 1983, the Sherman Act, and state law. The federal district court dismissed the case for lack of jurisdiction. The appeals court modified and affirmed the district court decision. According to the appeals court, the exorbitant telephone rates resulting from the challenged practice did not violate the First Amendment and the practice did not result in unconstitutional takings. The court also found that the practice did not violate anti-trust laws, and that the state officials responsible for the practice were entitled to qualified immunity from damages asserted under § 1983, given the "novelty" of the action. (Illinois)

U.S. District Court
CONTRACT SERVICES

Citizens Advy. Comm. on Priv. Pris. v. U.S. D.O.J., 197 F.Supp.2d 226 (W.D.Pa. 2001). A citizens' committee sued the U.S. Department of Justice and the Federal Bureau of Prisons, alleging that the defendants failed to comply with the National Environmental Policy Act (NEPA) when they awarded a contract to build and operate a new prison to a private company. The district court held that the committee had standing to bring the action and that the Bureau was required to prepare a final environmental assessment. According to the court, the Bureau "basically admitting that it had violated NEPA" ordered a halt to work on the facility and re-examined the environmental impact. The court held that the Bureau violated the provisions of NEPA when it initially awarded the contract. But the court found that the Bureau had cured its initial NEPA violations and was not required to file an Environmental Impact Statement, and allowed the project to proceed. (Cornell Corrections, Inc., Federal Bureau of Prisons, Clearfield County, Pennsylvania)

U.S. District Court
INMATE FUNDS

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 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 Correctional Facility, Kansas)

U.S. District Court
DISCRIMINATION
EMPLOYEE
QUALIFICATIONS

Winkelman v. Magne, 173 F.Supp.2d 821 (C.D.Ill. 2001). An applicant for employment with a state correctional facility filed a § 1983 action against employees responsible for interviewing candidates, alleging violation of his First Amendment rights. The district court granted summary judgment to the officials, finding that the applicant failed to tender any evidence of political affiliation discrimination. The court noted that politics, political affiliations, political beliefs, political activities, and political support were never mentioned or discussed at any time during the interview process. (Graham Correctional Facility, Illinois)

2002

U.S. District Court
POLICIES/
PROCEDURES

Bozeman v. Orum, 199 F.Supp.2d 1216 (M.D.Ala. 2002). The representative of the estate of a pretrial detainee brought a § 1983 action against a sheriff and officials at a county detention facility, alleging that the detainee's death was the result constitutional violations. The district court held that detention officers' use of force to restrain the detainee did not violate his Fourteenth Amendment right against the use of excessive force, even though the officers threatened to "kick" the detainee's "ass." The officers apparently punched or slapped the detainee, and the detainee died as the result of the officers' actions, but the court found that some level of force was necessary to restore order where the detainee was apparently undergoing a mental breakdown in his cell. The court held that nurses at the detention facility were not deliberately indifferent to the serious medical needs of the detainee when they failed to obtain treatment and medication upon learning that the detainee had been evaluated for mental health problems and prescribed medication in the past. The court noted that the nurses had no knowledge during intake beyond a "slight flag" of past evaluations for mental illness and that the detainee had medication to help him "rest." The court also found that the failure of the detention facility to implement a policy requiring staff to follow up on inmates who had acknowledged past mental health problems or evaluations for mental health problems, did not violate the detainee's Fourteenth Amendment right to adequate medical care. (Montgomery Co. Det. Facil., Alabama)

U.S. Appeals Court
INMATE FUNDS

Brown v. Crowley, 312 F.3d 782 (6th Cir. 2002). A state prison inmate brought a § 1983 action against prison officials, alleging that his prison account had been overcharged and that officials had retaliated against him for complaining about the overcharges. The district court dismissed the charges and granted summary judgment for the officials on all claims. The appeals court vacated and remanded. The appeals court held the inmate stated a First Amendment retaliation claim when he alleged that he was charged with a major misconduct, even though he was already in administrative segregation. Although the prisoner was eventually found not guilty of the charge, the court held that the charge subjected the prisoner to a risk of significant additional sanctions. The prisoner had complained that his prison account was being overcharged or embezzled and he was charged with filing a false complaint, even though prison officials were aware of an accounting problem with the account and knew that the prisoner's complaint might be valid. (Marquette Branch Prison, Michigan)

U.S. Appeals Court
POLICIES/
PROCEDURES

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. District Court
INMATE FUNDS

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 Dept. of Corrections, and Whiteville Correctional Facility, Tennessee)

U.S. Appeals Court
COMMISSARY
INMATE FUNDS

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 Dept. of Corrections)

U.S. Appeals Court
INMATE FUNDS
PRISONER
ACCOUNTS

Hatfield v. Scott, 306 F.3d 223 (5th Cir. 2002). A state prison inmate brought a § 1983 action against a state's criminal justice department, alleging that failure to pay interest on his inmate trust fund account violated the Takings Clause. The district court denied summary judgment for the state and the state appealed. The appeals court reversed and remanded. The appeals court held that when interest from prisoners' trust accounts is used to pay for the administration of the fund, providing benefit to prisoners, there is no "taking." The court found that the inmate had waived any property interest he may have had in interest in the trust account, since participation in the statutorily-created trust fund was voluntary. The court noted that the inmate was fully informed that apportionment of interest was at the discretion of the state, and he could have elected to have his money deposited in an interest-bearing account as an alternative. (Texas Department of Criminal Justice, Inmate Trust Fund Department)

U.S. Appeals Court
CONTRACT SERVICES

Hunt v. State of Missouri, Dept. of Corrections, 297 F.3d 735 (8th Cir. 2002). Female nurses who had been assigned by a temporary staffing agency to provide nursing services to state prisons, brought claims against the corrections department under Title VII. The district court entered judgment in favor of the nurses on the retaliation claims and awarded them attorney fees. The nurses appealed and the appeals court affirmed the district court decision. The appeals court held that the nurses were employees of the department, not independent contractors, and thus had standing to sue under Title VII, noting that the existence of a contract referring to a party as an independent contractor does not end the inquiry into whether the individual employee is protected by Title VII. According to the court, a person may have two or more employers for the same work, for the purposes of conferring standing to sue under Title VII. The court noted that the nurses did not work independently and were constantly under the supervision and scrutiny of corrections officials and employees, and although they were paid directly by the temporary staffing agencies, the nurses did no other work for the agency other than the prison work. The appeals court found that the nurses were constructively discharged, where their complaints about their treatment on the job were answered with threats to their well-being, threats of termination, efforts to obstruct their work, additional unnecessary and unreasonable job requirements, and general harassment. The court held that the award of $136,967 in attorney fees was warranted, even though the nurses did not prevail on their sexual harassment claims. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
DISPOSITION OF
FUNDS

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. District Court
EMPLOYEE DISCIPLINE

Moreland v. Miami-Dade County, 255 F.Supp.2d 1304 (S.D.Fla. 2002). A former corrections officer sued the county in state court, asserting claims for alleged race discrimination in violation of state and federal laws, equal protection and due process violations, and state law claims for negligent race discrimination, negligent supervision of employees, and retaliation in violation of state law. The federal district court granted summary judgment in favor of the county, in part. The court held that the county offered legitimate, nondiscriminatory reason for the officer's demotion. The court found that the former county corrections officer failed to show that, based on her race, a county manager disciplined her more severely than non-African American employees who violated a rule proscribing employees from associating with inmates and former inmates. The correctional officer had been dating a former county jail inmate. (Miami-Dade County Corrections Department, MDCC Jail, Florida)

U.S. Appeals Court
EMPLOYEE QUALIF-ICATIONS

Morris v. Crawford County, 299 F.3d 919 (8th Cir. 2002). A county detention center detainee brought § 1983 and state law battery claims against a sheriff, county, and deputies. The district court granted summary judgment for the defendants, in part, and the remaining claims were voluntarily dismissed. The appeals court affirmed, finding that there was not a strong causal connection between a deputy sheriff's background and the specific constitutional violation alleged by the detainee. The detainee had been arrested and charged with driving while intoxicated and disorderly conduct. After arriving at a county detention center, he refused to take a breathalyzer test and began to yell and bang on his cell door. Four deputies responded, and according to the detainee, they repeatedly assaulted him as they dragged him to another cell. One deputy allegedly used excessive force on the detainee by utilizing a "knee drop" on him, which severed the detainee's intestine. The court noted that the only violent act in the deputy's record was an incident in which he slapped an inmate, although ex parte protective orders were obtained against the deputy by both his ex-wife and girlfriend. The appeals court held that the sheriff and the county were not liable under § 1983 on the theory of deliberate indifference in hiring the deputy. (Crawford County Detention Center, Arkansas)

U.S. Appeals Court
PLANNING

Regional Economic Community v. City of Middletown, 294 F.3d 35 (2nd Cir. 2002). A community action program brought a suit under the Fair Housing Act, Americans with Disabilities Act (ADA) and the Rehabilitation Act, after it was denied a special-use permit to establish two halfway houses for recovering alcoholics. The district court ruled in favor of the defendants. The appeals
court affirmed in part, vacated in part, and remanded. The appeals court held that the recovering alcoholics who would have been residents of the proposed halfway houses were disabled for the purposes of ADA, FHA and the Rehabilitation Act. The appeals court found that summary judgment was precluded by a prima facie case of retaliation and by genuine issues of material fact as to the reasons for denial of the permit. (City of Middletown, New York)

U.S. Appeals Court
COMMISSARY

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)

U.S. Appeals Court
INMATE FUNDS

Wilson v. Sargent, 313 F.3d 1315 (11th Cir. 2002). A prisoner filed a §1983 suit and applied to proceed without prepayment of fees. The district court directed the prisoner to pay an initial partial fee and dismissed the case when the prisoner did not. The appeals court vacated and remanded. The appeals court held that the district court had properly assessed the initial filing fee and calculated the partial fee, but should have determined if the prisoner had attempted to comply with the fee order by requesting prison officials to withdraw funds, before dismissing the case. (Scott State Prison, Georgia)

2003

U.S. District Court
DUE PROCESS
CONDITIONS
EXERCISE
RECREATION
ACCESS TO COURTS
WORK

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 placing a convicted felon in pre-hearing segregation without notice or other process does not violate the Due Process Clause. 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 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. 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 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. The court found no denial of access to courts violation. The prisoners alleged that there were delays of two to three weeks in obtaining cites and materials from the prison law library, but they did not allege that these delays caused them any actual injuries or denied them a reasonably adequate opportunity to present their claims. 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. 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. Appeals Court
RECORDS

Brass v. County of Los Angeles, 328 F.3d 1192 (9th Cir. 2003). An arrestee brought an action against a deputy and county, alleging that the county violated his constitutional rights by failing to timely release him from jail. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court affirmed. The appeals court held that a 39-hour delay in releasing the detainee was not unreasonable and did not violate his constitutional rights. The court found that the arrestee did not have a constitutional right to have his release papers processed in any particular order, or ahead of other prisoners whose papers the sheriff's department received the same day as his. According to the court, the order in which the department handled prisoner releases was an administrative matter primarily within the department's discretion. The court held that the county's policy of not starting to process the day's releases until it received all information relating to prisoners scheduled for release, , including wants and holds, was justified and reasonable in light of its responsibilities. (Los Angeles County Sheriff's Department, California)

U.S. Appeals Court
EMPLOYEE DISCIPLINE

Catletti Ex Rel. Estate of Catletti v. Rampe, 334 F.3d 225 (2nd Cir. 2003). The widow of a former county employee brought a § 1983 action, alleging that the employee was fired in violation of the First Amendment for testifying truthfully in favor of former employees in an action against the county. The district court denied qualified immunity for the defendants and they appealed. The appeals court affirmed, finding that the former employee's testimony was protected by the First Amendment, as a matter of public concern, and that the right of the employee to speak on issues of public concern without retaliation was clearly established at the time the employee was fired. The employee had provided testimony about problems with the jail's mental health services, in a trial that examined whether other county employees had been wrongfully terminated for their public criticism of the county jail's mental health services. (Orange County Jail, New York)

U.S. District Court
RECORDS

Dennison v. Pennsylvania Dept. of Corrections, 268 F.Supp.2d 387 (M.D.Pa. 2003). A discharged employee sued a state corrections department and co-workers, asserting claims that included violation of Title VII, state human relations laws, wrongful discharge, and violation of a state whistleblower law. The district court granted summary judgment in part, and denied it in part. The court held that the employee's termination for distributing confidential inmate records to non-authorized persons did not violate his free speech rights. The court held that summary judgment was precluded by factual issues concerning his retaliation claim based on his verbal protestations of alleged discrimination, his § 1983 conspiracy claim, his Title VII claims based on reports of his employer's discrimination practices, and his whistleblower claims. The court held that speech concerning racial discrimination in the state's parole determinations was a matter of public concern. The employee had disseminated confidential prison records in an effort to address the alleged discrimination. The court found that the employee's interests did not outweigh the department's interest in keeping inmate psychological records confidential. (Pennsylvania Department of Corrections, State Correctional Institution- Mahanoy)

U.S. District Court
POLICIES/ PROCEDURES
CONTRACT SERVICES

Dismas Charities v. U.S. Dept., Just., Bur., Pris., 287 F.Supp.2d 741 (W.D.Ky. 2003). The operator of community corrections centers under contract to the federal Bureau of Prisons challenged the Department of Justice's amendment of its rules for designating the place of incarceration for federal offenders. The district court granted summary judgment for the defendants, finding that the operator lacked standing to challenge the rule amendment. The operator had claimed that the Bureau violated the notice and comment requirements of the Administrative Procedures Act. (Dismas Charities, Kentucky)

U.S. District Court
STAFFING LEVELS
WORKING CONDITIONS
EMPLOYEE UNIONS

Fraternal Order of Police v. Williams, 263 F.Supp.2d 45 (D.D.C. 2003). The union that represented correctional employees sued the District of Columbia to force a change in staffing patterns at a jail. The district court dismissed the action, finding that the District's alleged failure to provide correctional officers with a safe working environment did not violate their

substantive due process rights under the Fifth Amendment. The union was concerned about overcrowding and a reduction in the jail work force. (Central Detention Facil., Dist. of Columbia)

U.S. District Court
PROTECTIVE CUSTODY
EQUAL PROTECTION
PROGRAMS
RELIGIOUS SERVICES

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
RECORDS
POLICY/PROCEDURE

Maydak v. U.S. Dept. of Justice, 254 F.Supp.2d 23 (D.D.C. 2003). A prisoner sought the release, under the Freedom of Information Act (FOIA), of copies of law enforcement and prison records. The district court granted summary judgment for the government and the prisoner appealed. The appeals court held that the Bureau of Prisons (BOP) specifically exempted its systems of inmate records from the access provisions of the disclosure accounting requirement of the Privacy Act, as it was permitted to do. The court ruled that the BOP was justified in withholding records related solely to its internal personnel rules and practices, but not portions of staff manuals or staff statements about internal matters. The court held that the BOP failed to establish that certain requested information came under the FOIA exemption for information contained in personnel and medical files, and that the adequacy of its records search or that entire records were exempt from disclosure. (U.S. Department of Justice, Bureau of Prisons)

U.S. District Court
EMPLOYEE
DISCIPLINE

McClain v. Northwest Comm. Corr. Ctr., 268 F.Supp.2d 941 (N.D.Ohio 2003). A probationary employee of a community corrections center brought a wrongful termination action. The district court held that the employee was entitled to minimal due process of notice and an opportunity to be heard, before termination of her employment. The court noted that the employee could be terminated without cause because she was an at-will employee who was still in her probationary period. The employee had attended a meeting which critiqued her work but she was not told prior to the meeting that her conduct was at issue, or that it could lead to her termination. She was later given an ultimatum to either quit or be fired but was not told why the ultimatum had been issued. (Northwest Community Corrections Center, Ohio)

U.S. District Court
EMPLOYEE UNION
POLICIES/
PROCEDURES

Pierce v. Ohio Dept. of Rehabilitation and Corr., 284 F.Supp.2d 811 (N.D.Ohio 2003). Correctional officers brought a § 1983 action against a corrections department, challenging personnel strip search policies and alleging breach of a settlement agreement in a prior case. The district court dismissed the action. The court found that some of the officers had standing to bring the action, but that the officers' union lacked standing to pursue damages for its members' injuries, although it retained standing to seek declaratory relief. The court held that the imposition of a reasonable suspicion standard for the strip searches balanced the officers' Fourth Amendment interests with the government's interest in keeping contraband out of prisons. Under the reasonable suspicion standard, strip searches of prison employees must be articulable, particularized, and individualized, and officials must base strip searches on specific, objective facts and rational inferences based on those facts in light of their experience. The court ruled that the searches did not violate Equal Protection rights or the Due Process Clause. The court held that the searches violated the Fourth Amendment, where officers were chosen at random for searches, but that correctional officials were entitled to qualified immunity. The court noted that employees' legitimate expectations of privacy were diminished in a prison setting, and that employees were on notice that they were subject to searches. (Ohio Dept. of Rehab. and Corr.)

U.S. District Court
BUDGET
OVERTIME

Shepard v. Wapello County, Iowa, 250 F.Supp.2d 1112 (S.D.Iowa, 2003). A former county corrections officer sued a county and a sheriff, alleging wrongful termination as the result of his complaints of illegal conduct by a fellow officer, and of fiscal mismanagement in connection with the denial of overtime pay. The district court denied summary judgment for the defendants. The court held that summary judgment was precluded by fact issues as to whether the termination violated state public policy, violated a state whistleblower statute, and was retaliation for assertion of his First Amendment rights. (Wapello County, Iowa)

U.S. District Court
POLICIES AND
PROCEDURES

Sulton v. Wright, 265 F.Supp.2d 292 (S.D.N.Y. 2003). A prison inmate sued physicians and a state corrections department's medical director, alleging that his Eighth Amendment rights were violated when surgery to repair his torn knee ligaments was delayed for four years. The district court denied qualified immunity for the defendants. The court held that the inmate stated a claim of deliberate indifference against the physicians, and against the medical director based on a policy that contributed to the delay. The policy required transferee inmates to be evaluated as new cases, causing a delay in the inmate's surgery. (Wende Correctional Facility, Green Haven Correctional Facility, New York)

U.S. Appeals Court
PRISONER
ACCOUNTS
INMATE FUNDS

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)

U.S. Appeals Court
RECORDS

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)

2004

U.S. District Court
INMATE FUNDS

Abney v. Alameida, 334 F.Supp.2d 1221 (S.D.Cal. 2004). A state prisoner brought an action against a state corrections director alleging violations of the Fifth Amendment Takings Clause, the Equal Protection Clause, and due process. The prisoner alleged breach of judiciary duty and violations of state regulations regarding prison trust accounts, in connection with deductions taken from deposits made to the prisoner's trust accounts in order to pay court-ordered restitution. The court held that deductions taken from checks and money orders that were to be deposited into the prisoner's trust account in order to satisfy court-ordered restitution, did not violate the Takings Clause, where the restitution was duly authorized by state law. The court held that the director did not violate equal protection by allowing city and county inmates a $300 exemption of funds held in their trust accounts from collection to satisfy restitution orders, but not affording the same exemption to state prisoners, because the difference in the length of incarceration terms and nature of convictions suggested that jail inmates would be able to satisfy restitution fines more quickly because they would be released into the workforce sooner than state prisoners. (California Department of Corrections)

U.S. District Court
VOLUNTEERS

Estevez-Yalcin v. Children's Village, 331 F.Supp.2d 170 (S.D.N.Y. 2004). A parent brought an action alleging that her children had been sexually abused by a volunteer at a county juvenile treatment rehabilitation center. The district court granted summary judgment in favor of the defendants. The court held that the county did not negligently hire the volunteer or negligently retain or supervise the volunteer. According to the court, the failure of the county to conduct a background check on the volunteer before hiring him did not amount to negligent hiring, absent evidence that a routine background check would have revealed that the volunteer had a propensity to harm children. (The Children's Village, Westchester County Health Care Corporation, New York)

U.S. District Court
RECORDS

Ginest v. Board of County Com'rs. of Carbon County, 306 F.Supp.2d 1158 (D.Wyo. 2004). A motion was filed seeking to hold a board of county commissioners in contempt for violating the requirements of a 1987 consent decree concerning inmate medical care. The county board refused to comply with the plaintiffs' request for inmate records, unless a signed release was provided for each inmate whose file was requested. The court held that the plaintiffs' counsel was entitled to examine client medical records to determine whether a systematic failure occurred in the jail's health care system, without signed releases. The court ordered the information to be kept confidential, except to the extent necessary to advise the court of any violations of federal law. (Carbon County, Wyoming)

U.S. District Court
RECORDS

Ginest v. Board of County Com'rs. of Carbon County, 333 F.Supp.2d 1190 (D.Wyo. 2004). County jail inmates brought a class action against a county and sheriff, alleging deliberate indifference to the inmates' medical needs, and seeking declaratory and injunctive relief. Following the entry of a consent decree governing medical care, the inmates sought a contempt order, alleging specific violations of the decree's terms. The defendants moved to terminate the consent decree. The district court held that the county was potentially liable, and the sheriff was potentially liable for failure to train. The court found that the constitutional rights of the inmates were violated by inadequate medical care and inadequate medical records at the jail, including lack of training in suicide prevention. According to the court, jail medical records that are inadequate,

inaccurate and unprofessionally maintained are actionable under the Eighth Amendment. The court found that many physician progress notes and other medical records were missing, there was no written definition of a medical emergency requiring immediate care, there were numerous delays in responding to inmate requests for medical care, there was no suicide prevention training nor written policies, and potentially suicidal inmates were often isolated physically and provided with little or no counseling. (Carbon County Jail, Wyoming)

U.S. Appeals Court
INMATE FUNDS

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 Department of Corrections)

U.S. Appeals Court
RECORDS
INMATE FUNDS
PRISONER ACCOUNTS

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. Appeals Court
BUDGET
STAFFING LEVELS

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
CONTRACT SERVICES

Morales Feliciano v. Rullan, 378 F.3d 42 (1st Cir. 2004). The government moved to terminate an injunction issued pursuant to a consent decree that addressed unconstitutional conditions of an inmate health care system. The district court denied the motion and the government appealed. The appeals court affirmed. The court held that there was an adequate record of continuing constitutional violations and that the district court's order to privatize the system met the Prison Litigation Reform Act's (PLRA) requirements for narrowness, need, and lack of intrusiveness. The district court had found substandard conditions that included the following findings: one-fourth of all inmates who requested sick call did not get it; only 55% of all ambulatory care appointments actually took place; only 49% of specialist consultations deemed necessary for serious conditions were arranged; medically prescribed diets were routinely ignored; mortality rates were rising; and only 31.3% of inmates who had been diagnosed HIV-positive were receiving treatment. The appeals court voiced frustration with this case: "Like the legendary Phoenix, this class action litigation involving prison conditions in Puerto Rico is seemingly incapable of eternal rest...given the long and tortuous history of this litigation--two years ago, we acknowledged that 'the lore of this case is Byzantine.'" (Puerto Rico)

U.S. District Court
BUDGET

Shaw v. Coosa County Com'n., 330 F.Supp.2d 1285 (M.D.Ala. 2004). The daughter and the administratrix of an estate brought a civil rights action against a county, sheriff and other persons after her father died while in jail. The district court denied the defendants' motion to dismiss, in part. The court held that the plaintiff stated a claim against the county for an alleged breach of duty to provide adequate funding for medical treatment of, and medicines for, the inmate. The father had died while he was serving a 90 day sentenced for domestic violence, and allegedly was not screened for a determination of proper medical care. (Coosa County Jail, Alabama)

U.S. District Court
PRISONER ACCOUNTS

Taylor v. Sebelius, 350 F.Supp.2d 888 (D.Kan. 2004). A state prison inmate brought a civil rights action against state officials, alleging that a state regulation imposing a $25 monthly supervision fee on parolees was unlawful and violated his rights under the ex post facto clause and the Fifth, Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the officials. The court held that the deduction of parole supervision fees from the inmate's account was not cruel and unusual punishment and the regulation did not violate the ex post facto clause. The inmate claimed that he was unable to purchase basic hygiene items for a short time because of the fees. The court found that the state legislature did not intend the fee to be punitive and the fee was not so extreme as to constitute punishment. According to the court, collection of the fee was reasonably related to legitimate penological interests. The court held that due process did not entitle the prison inmate to a hearing before the money was taken from his inmate account. (Winfield Correctional Facility, Kansas)

2005

U.S. Appeals Court
POLICIES/PROCEDURES

Calhoun v. Ramsey, 408 F.3d 375 (7th Cir. 2005). A former county jail inmate brought a § 1983 action against a sheriff and the county's medical care contractor, alleging deliberate indifference to his medical needs. The district court entered judgment on a jury verdict in favor of the defendants and the former inmate appealed. The appeals court affirmed, finding that the inmate had to show the existence of widespread policies or practices to establish municipal liability, and that the inmate could not establish municipal liability based on a single incident. The inmate alleged that he was injured by the delay of his medication, due to the lack of a provision in the county's medical policy for advance verification of inmate prescription medications. The inmate had been sentenced to serve evenings and weekends at the county jail to satisfy a 120-day motor vehicle violation. In the days leading up to the start of his sentence he called the jail twice in an effort to obtain approval of his medication. Instead, the jail followed state jail standards that required "...medication in the possession of the detainee at admission shall be withheld until verification of its proper use is obtained and documented. This verification shall be made as soon as possible, but within the time interval specified for administration of the medication on the prescription container." (Kane County Jail, and Correctional Medical Services, Inc., Illinois)

U.S. Appeals Court
RECORDS

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
POLICIES/PROCEDURES

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
RECORDS

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. (Sacramento County Jail, California)

U.S. District Court
WORKING CONDITIONS

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
COMMISSION
TELEPHONE COSTS

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
POLICIES/PROCEDURES

Jackson v. First Correctional Medical Services, 380 F.Supp.2d 387 (D.Del. 2005). A prisoner sued a prison's medical provider under § 1983 alleging failure to provide adequate medical care for his chronic ear problems. The district court held that the prisoner stated a cause of action for deliberate indifference. The inmate alleged that there was a continuous pattern of his medical treatment being delayed for non-medical reasons, and that policy failed to address the immediate needs of inmates with serious medical conditions. According to the court, the inmate's allegations suggested the absence of basic policies to insure that medical orders of treating physicians were reasonably followed and that medical orders of physicians were reasonably transmitted. (Delaware Correctional Center)

U.S. District Court
POLICIES/PROCEDURES

James v. Aidala, 389 F.Supp.2d 451 (W.D.N.Y. 2005). A state prison inmate brought a pro se § 1983 Eighth and Fourteenth Amendment action against corrections officials, alleging that a wrongful disciplinary action against him, later rescinded, resulted in harmful changes in his term of confinement and loss of good time credits. The district court denied an official's motion to dismiss. The court held that the inmate stated a "personal involvement" criterion for his claim against a corrections commissioner by alleging the existence of a policy or custom to proceed with constitutionally infirm disciplinary determinations, and the commissioner's knowledge or creation of that policy. (New York State Department of Corrections)

U.S. District Court
DISCRIMINATION

Johnson v. Connecticut Dept. of Corrections, 392 F.Supp.2d 326 (D.Conn. 2005). An African-American Christian pastor formerly employed by a state corrections department brought an employment discrimination action in state court and under Title VII and § 1981 against his former employer. The action was removed to federal court, where the court granted summary judgment in favor of the department in part, and denied it in part. The court held that the employee did not show that his failure to be promoted to a supervisory position that was given to a white candidate occurred under circumstances giving an inference of race discrimination.

(Connecticut Department of Corrections)

U.S. Appeals Court
RECORDS

Luckes v. County of Hennepin, 415 F.3d 936 (8th Cir. 2005). An arrestee brought a § 1983 action against a county and a sheriff related to his 24-hour detention after his arrest. The district court granted summary judgment in favor of the defendants and the arrestee appealed. The appeals court affirmed, finding that the arrestee's due process rights were not violated by his twenty-four hour detention following his arrest for an outstanding bench warrant, since the length of the detention did not shock the conscience and the arrestee did not complain of any mistreatment by jail staff. The arrestee had failed to pay fines for two traffic citations and bench warrants had been issued. His license had also been suspended. He was stopped and cited for driving without a license and then he was arrested pursuant to the bench warrants. He was placed in a holding cell, where an officer told him that he had "picked the worst day to be here" because the jail had just activated a new computerized jail management system and problems were encountered. A sign posted in the jail asked inmates to "be patient" and that it "may take more than eight hours" to process their paperwork. During his 24-hour detention the arrestee was repeatedly placed in overcrowded cells with persons arrested for crimes that were significantly more violent in nature than failure to pay traffic fines. He endured threats and intimidation from other inmates, as well as mockery prompted by his speech impediment. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
APA- Administrative Procedures Act

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 Correctional Institution, Otisville, New York)

U.S. Appeals Court
APA- Administrative Procedures Act

Paulsen v. Daniels, 413 F.3d 999 (9th Cir. 2005). Federal prisoners brought petitions for habeas relief, challenging the decision of the federal Bureau of Prisons (BOP) to exclude prisoners, whose crime of conviction involved firearms, from eligibility for early release following completion of drug treatment. The district court granted the petitions and the government appealed. The court of appeals reversed in part, finding that the BOP could only apply the restriction prospectively. After several more proceedings the case was again before the appeals court. The court held that the BOP violated the Administrative Procedures Act (APA) when it adopted an interim rule and that the prisoners suffered injuries in fact by the BOP's adoption of the interim rule. The court found that the BOP adopted the rule that excluded the prisoners from eligibility without first publishing a notice of the proposed rule-making, without providing a period for comment on the rule before adoption, and that the BOP did not publish the adopted rule before its effective date. The court found that the BOP's violation of APA was not harmless and that the rule was invalid. The court noted that the BOP had adopted the interim rule because federal circuit courts of appeal had not agreed on the constitutionality of the previous rule. (Federal Correctional Institution, Sheridan, Oregon)

U.S. District Court
POLICIES/PROCEDURES

Perez-Garcia v. Village of Mundelein, 396 F.Supp.2d 907 (N.D.Ill. 2005). A county jail detainee brought an action against a county and sheriff under § 1983 alleging violation of his due process rights, and asserting claims for false imprisonment. The district court granted the defendants' motion to dismiss in part, and denied it in part. The court held that the detainee's complaint against the sheriff sufficiently stated a claim for deprivation of due process rights, where the detainee alleged he was jailed for nearly one month over his vigorous and repeated protests that he was the wrong person, that he provided jail personnel with his identification card and repeatedly told them he was not the named suspect, that his physical appearance did not match the suspect's description, and that his detention continued for a day after a court ordered his release. According to the court, the detainee sufficiently alleged that a policy, practice or custom of the sheriff's department caused the alleged deprivation, and that the sheriff was responsible for setting and supervising jail policies and procedures that did not require confirmation of the detainee's identity. (Lake County Jail, Illinois)

U.S. Appeals Court
COMMISSARY INMATE FUNDS

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. At the time of the incident the jail held 118 inmates and was staffed at normal levels, having five officers on duty. 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
DISCRIMINATION
WORKING CONDITIONS

Redding v. Florida, Dept. of Juvenile Justice, 401 F.Supp.2d 1255 (N.D.Fla. 2005). A female former juvenile detention facility supervisor sued a state juvenile justice department claiming she was subjected to an abusive environment in retaliation for a good faith claim of gender discrimination. After complaining of gender discrimination, the employee was moved to a less desirable shift, assigned undesirable duties, provided with insufficient staff, denied permission to wear an unobtrusive heart monitor for one month, and was generally treated disrespectfully. After a jury entered a verdict in her favor the department sought judgment in its favor as a matter of law. The district court denied the motion, finding that the conduct of the employee's supervisor was sufficient to support an abusive environment claim. (Leon County Detention Center, Florida)

U.S. Appeals Court
POLICIES/PROCEDURES

Russell v. Hennepin County, 420 F.3d 841 (8th Cir. 2005). A detainee sued a sheriff, deputies, inspectors and a county, alleging that his six-day prolonged detention at a county detention center violated his Fourth and Fourteenth Amendment rights and constituted false imprisonment under state law. The district court granted the county's motion for summary judgment and the detainee appealed. The appeals court affirmed. The court held that the detention center's policy regarding the monitoring of inmates who were subject to conditional release was not deliberately indifferent to inmates' constitutional rights because of the lack of policies to expedite the process of conditional release. The court found that the detainee failed to establish that the detention center's policy regarding the monitoring of inmates who were subject to conditional release caused his prolonged detention, where at worst, his detention for six additional days resulted not from the executing of the policy, but from the failure to assiduously follow the policy. The court held that the detainee did not demonstrate municipal liability where he failed to show a widespread pattern of failing to follow the "check daily" policy with respect to detainees subject to conditional release. (Hennepin Co. Adult Det. Ctr, Minn.)

U.S. Appeals Court
POLICIES/PROCEDURES

Snow ex rel. Snow v. City of Citronelle, AL., 420 F.3d 1262 (11th Cir. 2005). The administrator of the estate of a pretrial detainee who had committed suicide while in jail brought an action against a city, its mayor and several police department employees, alleging violations of the detainee's rights under the Eighth and Fourteenth Amendment and asserting a state wrongful death claim. The detainee had been arrested for driving under the influence of alcohol or drugs. The district court granted summary judgment for the defendants on the federal claims and dismissed the state law claims. The administrator appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The court held that police department employees who lacked a subjective knowledge of the detainee's potential for suicide were not liable, in their individual capacities, for any constitutional violations. The court noted that the employees had no knowledge of either the detainee's emergency room records showing that the detainee told emergency room staff she had attempted suicide four times before, or of doctor's notes showing that the detainee had suicidal ideation. The court denied summary judgment for one police officer, finding fact issues as to whether he believed that there was a strong risk that the detainee would attempt suicide and did not take any action to prevent her suicide. According to the court, the city's alleged lack of a suicide policy did not cause any constitutional violation. (City of Citronelle Jail, Alabama)

U.S. District Court
INSPECTION

Valdes v. Crosby, 390 F.Supp.2d 1084 (M.D.Fla. 2005). The estate of an inmate who died in prison after an alleged beating by correctional officers brought a § 1983 action against prison officials and prison nurses. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that summary judgment was precluded by a genuine issue of material fact on a supervisory liability claim against a warden. The court also held that there were genuine issues of material fact as to whether inmate abuse at the hands of prison officers occurred with sufficient regularity to demonstrate a history of widespread abuse at the prison, and as to whether the prison warden established customs and practices that resulted in deliberate indifference to violations of inmates' constitutional rights. According to the court, it was clearly established at the time of the inmate's death that the warden could face liability under § 1983 predicated on his failure to take reasonable steps in the face of a history of widespread abuse that created a known substantial risk of serious harm to inmates. The court found that a prison inspector was not liable on a § 1983 supervisory liability claim, since the inspector was neither responsible for, nor had authority to prevent or correct

problems relating to abusive officers. (Florida State Prison)

2006

U.S. District Court
RECORDS

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
POLICIES/PROCE-DURES

Carroll v. City of Quincy, 441 F.Supp.2d 215 (D.Mass. 2006). A pretrial detainee who was injured when he fell in a cell after being left with his hands handcuffed behind his back, sued a city and city police officers, alleging negligence and violations of his federal and state civil rights. The detainee fell as he attempted to exit the cell when he was still handcuffed. It was later determined at the hospital that the detainee had a blood alcohol content of 0.37. The detainee allegedly sustained serious injuries, including a subdural hematoma, traumatic brain injury, depressive illness and seizure disorder. The court found that the officers' conduct in leaving the highly intoxicated pretrial detainee in a cell was not undertaken pursuant to any city policy or custom, as required for the imposition of municipal liability, where the city had rather detailed written policies restricting the use of handcuffs. According to the court, the officers' conduct in leaving the detainee alone with his hands handcuffed behind his back was not caused by deliberately indifferent policies of the city, where the city's policies clearly delineated the proper procedures for the use of restraints on intoxicated detainees and the handling of such detainees. (City of Quincy Police Station, Massachusetts)

U.S. Appeals Court
DISCRIMINATION

Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971 (7th Cir. 2006). A state corrections employee brought an action against the agency and supervisors under Title VII and § 1983, alleging that he was demoted because of his race. The district court entered judgment upon jury verdict in favor of the employee, and defendants appealed. The appeals court affirmed, finding that evidence was sufficient to support the jury's verdict in favor of the employee. The court noted that although there was no direct evidence that the agency and supervisors were motivated by racial bias when they demoted the employee after he was found to have harassed a co-worker, an agency memo drafted and approved by the supervisors indicated that the employee's violation was a category B violation. Two white employees received far less severe penalties for category B violations, and testimony that the supervisors thought the employee's violation was more serious than category B came from the supervisors rather than from disinterested witnesses and was not supported by documentary evidence. (Jackson Correctional Institution, Wisconsin)

U.S. District Court
RECORDS
FOIA- Freedom of Information Act

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. District Court
TELEPHONE COSTS
APA-Administrative Procedures Act

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. District Court EMPLOYEE DISCIPLINE	*Locicero v. O'Connell*, 419 F.Supp.2d 521 (S.D.N.Y. 2006). An inmate brought a pro se § 1983 action against a correction facility's superintendent and a correction officer, alleging deprivations of his Eighth Amendment right to be free of cruel and unusual punishment. The district court held that the inmate's allegations were sufficient to plead that the superintendent was personally involved in an alleged deprivation of the inmate's constitutional rights. The court found that the inmate stated a claim against a prison superintendent for deliberate indifference under § 1983 by alleging that the risk a corrections officer posed to inmates was obvious prior to the deprivation the inmate allegedly suffered, and by alleging that a corrections officer reportedly was officially reprimanded for misconduct towards inmates and that the severity of his misconduct rose to a level requiring his temporary removal from duty or from a particular program. The inmate alleged that the officer threatened him and hit him on more than one occasion. (Downstate Correctional Facility, New York)
U.S. Appeals Court POLICIES/PROCEDURES	*Long v. County of Los Angeles*, 442 F.3d 1178 (9th Cir. 2006). The widow of an inmate who had been confined 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 County Jail, California)
U.S. District Court APA- Administrative Procedures Act	*Nguyen v. B.I. Inc.*, 435 F.Supp.2d 1109 (D.Or. 2006). Aliens from Cuba and Vietnam, who had final orders of removal and had been released from custody on general orders of supervision, but who had violated their orders by committing crimes, petitioned for a writ of habeas corpus challenging the validity of the Department of Homeland Security's (DHS) Intensive Supervision Appearance Program (ISAP). The district court denied the petition, holding that: (1) ISAP regulations requiring participating aliens to remain in their residences between eight and 12 hours per day was not "detention" outside the statutory authority of Immigration and Customs Enforcement (ICE); (2) ISAP requirements did not violate the aliens' liberty interests under the Fifth Amendment; (3) placement of the aliens in ISAP did not violate their procedural due process rights; and (4) ISAP was not subject to Administrative Procedure Act (APA) requirements. (Department of Homeland Security (DHS)'s Intensive Supervision Appearance Program, Oregon)
U.S. District Court CONTRACT SERVICES	*Olivas v. Corrections Corp. of America*, 408 F.Supp.2d 251 (N.D.Tex. 2006). An inmate brought a § 1983 action against a private company that managed a prison, alleging violations of his constitutional rights and a claim of negligence under state law. The corporation moved for summary judgment and the district court granted the motion. The court held that: the company was not liable for alleged deliberate indifference to the inmate's serious medical needs; even if the corporation failed to properly prioritize the inmate's dental injury, the failure did not amount to deliberate indifference to the inmate's serious medical needs; and the inmate did not suffer a "physical injury" under the Prison Litigation Reform Act (PLRA). (Corrections Corporation of America, Mineral Wells Pre-Parole Transfer Facility, Texas)
U.S. Appeals Court HARASSMENT	*Patterson v. Balsamico*, 440 F.3d 104 (2nd Cir. 2006). An African-American former employee of a county sheriff's department brought an action against another corrections officer, alleging the existence of a racially discriminatory hostile work environment and the intentional infliction of emotional distress. After a jury trial, the district court awarded the former employee nominal damages on the hostile work environment claim, $100,000 on the emotional distress claim, and

$20,000 in punitive damages. The court denied the corrections officer's motion for a new trial and awarded the former employee attorney fees. The parties appealed. The court of appeals affirmed in part, and vacated and remanded in part. The appeals court held that the district court did not abuse its discretion when, pursuant to New York law, it declined to reduce compensatory damages of $100,000 awarded to the plaintiff on his claim for intentional infliction of emotional distress, arising from an assault in which the officer and others sprayed the plaintiff with mace, covered him with shaving cream, and taunted him with racial slurs. The court noted that the plaintiff had testified as to his humiliation, embarrassment, and loss of self-confidence, as well as to his sleeplessness, headaches, stomach pains, and burning in his eyes from the use of mace. The appeals court found that the punitive damages award of $20,000 did not exceed the maximum permissible amount considering that this was a thoroughly reprehensible incident, particularly in light of its racial motivation, and that the punitive damages award represented a relatively small fraction of $100,000 compensatory damages awarded on the emotional distress claim. The court noted that the officer against whom the award was made should have appreciated the gravity of the racially motivated assault on a fellow officer and should have understood that such conduct could have adverse economic consequences. But the appeals court concluded that the $20,000 damage award was excessive in light of the personal finances of the defendant corrections officer, who earned an annual salary of approximately $37,632, was married and had two children. The court found that an award of no more than $10,000 would provide sufficient punishment and deter future conduct. The court remanded the case for a new trial on punitive damages, unless the plaintiff agreed to remit the portion of the punitive damages award that exceeded $10,000. The plaintiff alleged that he had been subjected to a racially discriminatory hostile work environment and that his employment had been terminated because of his race. He alleged that he heard fellow employees use racial slurs and make disparaging remarks about African-Americans on approximately 12 occasions during his first three months of employment. (Oneida County Correctional Facility, New York)

U.S. 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. 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
FOIA- Freedom of Information Act

Prison Legal News v. Lappin, 436 F.Supp.2d 17 (D.D.C. 2006). A prison legal journal, Prison Legal News (PLN), brought an action against the federal Bureau of Prisons (BOP), challenging the agency's refusal to grant a waiver of search and duplication fees associated with a Freedom of Information Act (FOIA) document request. The district court granted summary judgment for the plaintiff, finding that the BOP was the proper defendant in the action, and the BOP improperly denied the fee waiver request. According to the court, PLN demonstrated that the disclosure of records pursuant to the Freedom of Information Act (FOIA) would contribute to the understanding of government operations or activities, as required to qualify for a fee waiver, since the information at issue had not reached the threshold level of dissemination, and where the request sought information regarding specific events that occurred within BOP facilities that would provide insight to the public about how its federal prisons were being managed and operated, and how its tax dollars were being expended. PLN had submitted a FOIA request to the BOP seeking "a copy of all documents showing all money paid by the [BOP] for lawsuits and claims against it" between January 1, 1996 and July 31, 2003. Specifically, the plaintiff sought "a copy of the verdict, settlement or claim in each case showing the dollar amount paid, the identity of the plaintiff/claimant and the legal identifying information for each lawsuit or claim or attorney fee award" and "a copy of the complaint ... or the claim ... in each incident which describes the facts underlying each lawsuit and claim." Under FOIA, fees will be waived if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." To support its request for a fee waiver, PLN provided the following information in its letter to the BOP: "PLN is a § 501[c](3) non-profit organization. We are a serious legal and political journal that reports on news and litigation involving detention facilities. We have published monthly since 1990 and currently have around 3,400 subscribers in all 50 states. We [e]stimate our actual readership to [be] in the range of 18,000 people. We believe that the requested documents will shed light on the operations of the BOP and help provide the public with a better understanding of how the nation's prison system is run and managed since damage verdicts and settlements are an important means of measuring respect for constitutional rights within penal facilities. Moreover, the payout of government money is a strong indicator to tax payers of how government facilities are operated. The information requested is plainly related to the operations and activities of the BOP." (Federal Bureau of Prisons)

U.S. Appeals Court
DISCRIMINATION

Rodriguez-Marin v Rivera-Gonzalez, 438 F.3d 72 (1st Cir. 2006). Employees of Puerto Rico's corrections administration filed suit under § 1983 against the administration alleging political discrimination, claiming that they were demoted in violation of their First Amendment and due process rights. The district court entered a verdict for the employees, awarding compensatory and punitive damages, and the defendants appealed. The court of appeals affirmed, finding that evidence was sufficient to support the jury finding that the employees were demoted based on their political affiliation. The court noted that the employees were long-standing, competent employees and that both were demoted without being given any notice or opportunity to defend their demotions, and that important documents were missing from their personnel files. According to the court, punitive damages of $120,000 to $195,000 assessed against the chief legal advisor of the new political administration were not excessive because the demotions jeopardized the employees' livelihood. As a result of their demotions, one employee's salary was reduced by 60 percent and the other's was reduced by 43 percent. Both employees suffered harm to their professional careers, were unable to meet their financial obligations because of their reduced salaries, and suffered emotional distress for which they sought medical attention. The court noted that "discrimination based on political-party affiliation is rampant in government employment in Puerto Rico." (Administration of Corrections, Puerto Rico)

U.S. District Court
EMPLOYEE QUALIFI-CATIONS
DISCRIMINATION

Rogers v. Haley, 421 F.Supp.2d 1361 (M.D.Ala. 2006). A Caucasian state corrections sergeant sued his superiors, claiming that he was denied promotions due to his race in violation of his equal protection rights. The defendants moved for summary judgment and the district court granted the motion in part and denied it in part. The court held that the equal protection rights of the sergeant were not violated when a Black officer was selected over him for promotion to lieutenant, despite the claim that the recruitment policies of the department encouraged blacks to apply for the position, decreasing the prospects of whites to receive the appointment. The court noted that the Black applicant interviewed very well, showed an outstanding grasp of the elements of the position, and had local experience. The court held that summary judgment was precluded as to the Equal Protection Clause claim alleging purposeful discrimination. The court found that a warden's affidavit, admitting that he would have recommended the White male correctional officer for promotion to lieutenant but for his belief that a "no-bypass rule" required him to promote any black or female employee from the promotional register, precluded summary judgment for the defendant. At the time of the events giving rise to this litigation, the department and all other state agencies were subject to a 1970 injunction which provided that: "Defendants shall not appoint or offer a position to a lower-ranking white applicant on a certificate in preference to a higher-ranking available Negro applicant, unless the defendants have first contacted and interviewed the higher-ranking Negro applicant and have determined that the Negro applicant cannot perform the functions of the position, is otherwise unfit for it, or is unavailable. In every instance where a determination is made that the Negro applicant is unfit or unavailable, documentary evidence shall be maintained by the defendants that will sustain that finding." This provision is called the "no-bypass rule." (Ala. Dept. of Corrections)

U.S. Appeals Court
RECORDS
FOIA- Freedom of Information Act

Sample v. Bureau of Prisons, 466 F.3d 1086 (D.C.Cir. 2006). A federal inmate requested records in an electronic format pursuant to the Freedom of Information Act (FOIA). The district court granted summary judgment for the federal Bureau of Prisons (BOP), which had provided the documents in paper format. The inmate appealed and the appeals court reversed and remanded with instructions. The court held that pursuant to FOIA, BOP was obligated to provide records to the federal inmate in the electronic format the inmate requested. (Federal Bureau of Prisons, Washington, D.C.)

U.S. District Court
POLICIES/PROCE-DURES

Shaw v. Coosa County Com'n., 434 F.Supp.2d 1179 (M.D.Ala. 2006). A daughter, individually and as administrator of the estate of her deceased father, brought state and federal law claims against a sheriff and county commission arising from her father's death while he was an inmate in a county jail. The county commission and sheriff filed separate motions for summary judgment, which the district court granted. The court held that the county sheriff did not have the requisite knowledge to be found deliberately indifferent to the serious medical needs of the inmate who failed to disclose his medical condition or to request treatment. According to the court, the sheriff did not violate the Eighth Amendment rights of the jail inmate who died of cardiovascular disease on his second day of incarceration, absent a showing that the inmate disclosed his condition upon admission, that the sheriff otherwise knew that the inmate had a serious condition that required immediate medical treatment, or that the sheriff failed to provide the inmate with treatment with knowledge that failure to do so posed a substantial risk of serious harm. The inmate apparently was not taking his medications and did not request medical treatment. The court found that facially constitutional policies governing booking, supervision, staffing, and training of jail personnel did not, as applied, result in deliberate indifference to the serious medical needs of the inmate, where the policies provided for health screening of inmates upon their admission and medical treatment when requested by inmates, and there was no evidence that the policies were ignored nor any history of widespread problems to place the sheriff on notice of the need to correct the policies, as required to hold the sheriff individually liable. (Coosa County Jail, Alabama)

U.S. District Court
RECORDS

Shidler v. *Moore*, 409 F.Supp.2d 1060 (N.D.Ind. 2006). A prisoner brought a pro se action against prison officials under § 1983 and Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging denial of his rights to worship, to petition for redress of grievances, and to have access to courts. The prisoner requested a preliminary injunction and the district court denied the request. According to the court, the alleged failure of state prison officials to quickly correct records that listed the prisoner's religion, with the result that the prisoner was prevented from engaging in communal worship for 39 days, if proven, did not violate the prisoner's First Amendment rights where any such actions were the result of negligence, not an intent to deny the prisoner access to worship. The court found that allegations of the prisoner's complaint against prison officials, stating that he was not allowed to use his religious name to send or receive mail, stated a cause of action under the First Amendment and RLUIPA for monetary damages and injunctive relief. (Miami Correctional Facility, Indiana)

U.S. District Court
PRISONER ACCOUNTS

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)

U.S. District Court
RECORDS

Skinner v. *Uphoff,* 410 F.Supp.2d 1104 (D.Wyo. 2006). A state prison inmate brought a § 1983 class action against prison officials, alleging failure to safeguard inmates against assaults by other inmates, and seeking individual compensatory as well as class injunctive relief. The district court granted injunctive relief and declaratory relief, finding that the defendants failed to adequately train and supervise employees, failed to properly review policy violations, and failed to properly discipline employees, all of which led to risks to inmate safety. In an effort to alleviate the problems at the prison, a remedial plan was adopted and approved by the court. The parties filed various motions to modify the remedial plan and the state moved for termination of the final decree. The district court granted the motions in part, and denied in part. The court held that state inmates and prison officials were entitled, under the remedial plan, to the opportunity to ask an outside investigator about reports of his investigation of suspected premeditated inmate-on-inmate assaults. The investigator was an independent contractor, and his reports bore directly upon whether officials were complying with plan. The court held that the inmates had the right under the Prison Litigation Reform Act (PLRA) to pursue discovery as to existence of the alleged ongoing and continuing constitutional violations before the court could terminate the remedial plan entered in the inmates' action challenging officials' responses to inmate-on-inmate violence. The court concluded that the inmates demonstrated good cause for a 60-day postponement of an automatic stay of the remedial plan after the officials filed a motion for termination, where the inmates made allegations of ongoing inmate-on-inmate violence and delays in the officials' remedial actions, and a joint expert raised various concerns. (Wyoming State Penitentiary)

U.S. District Court
FOIA- Freedom of Information Act

Swope v. *U.S. Dept. of Justice*, 439 F.Supp.2d 1 (D.D.C. 2006). A federal inmate brought a pro se action under the Freedom of Information Act (FOIA) seeking copies of recorded telephone conversations between him and third parties in the possession of Bureau of Prisons (BOP). The district court held that the third parties involved with the calls did not waive their privacy interests, that the recordings were exempt from disclosure, and that the exempt and non-exempt portions of the recordings were non-segregable. According to the court, the BOP recordings of inmate telephone conversations are the functional equivalent of “law enforcement records” for the purposes of a Freedom of Information Act (FOIA) exemption from disclosure of law enforcement records that would involve an invasion of a third party's privacy. (Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. District Court
RECORDS

U.S. v. *Caro,* 461 F.Supp.2d 478 (W.D.Va. 2006). An inmate was charged with first degree murder of his cellmate. The district court granted the inmate’s discovery motion seeking certain Bureau of Prisons (BOP) records based upon *Brady,* and denied his motions seeking some records on other grounds. The inmate and the government filed objections. The district court held that: (1) the government was not required to disclose the requested records under *Brady,* and (2) government was not required to disclose the requested records under the rule requiring production, upon request, of data and material to prepare for defense. The inmate had asked for BOP records concerning all inmates who had ever been confined in a supermax control unit, all incidents of inmate violence in the same control unit, and all inmate homicides that had occurred in BOP prisons nationwide in last 20 years. The court held that the material with not necessary with respect to the future dangerousness of the capital defendant charged with murdering his cellmate, and the government was not required to disclose them under *Brady,* inasmuch as there was no indication that such records would support the opinion of an expert who stated that he could make an individualized assessment of the likelihood that the inmate would commit violent acts in future. (U.S. Penitentiary, Lee, Virginia)

U.S. District Court
BUDGET

U.S. v. *Terrell County, Ga.*, 457 F.Supp.2d 1359 (M.D.Ga. 2006). The federal government brought a Civil Rights of Institutionalized Persons Act (CRIPA) action against a county, county sheriff, and various other county officials, seeking a determination that county jail conditions were grossly deficient in violation of the Fourteenth Amendment. The district court granted the government’s motion for summary judgment. The court held that the sheriff and other officials were deliberately indifferent to the jail's gross deficiencies in the areas

of medical and mental health care for inmates, protection of inmates from harm, environmental health and safety of inmates, and fire safety, in violation of the due process clause. The court noted that the lack of funds is not a defense to, nor legal justification for, unconstitutional conditions of a jail, for the purpose of analyzing a deliberate indifference claim under the due process clause of the Fourteenth Amendment. Even if a defendant argues that it is planning or working towards construction of a new jail to remedy the unconstitutional conditions at the current facility, the failure to implement interim measures to alleviate those conditions demonstrates deliberate indifference, according to the court. (Terrell County, Georgia)

2007

U.S. Appeals Court
WORKING CONDITIONS

Adair v. *U.S.*, 497 F.3d 1244 (Fed. Cir. 2007). Current and former federal prison employees brought an action against the government for back pay, hazard pay, environmental hazard pay, and contributions to thrift savings accounts due to their exposure to second-hand cigarette smoke at their workplace. The U.S. Court of Federal Claims granted the government's motion to dismiss. The employees appealed. The appeals court affirmed on an alternative ground. The appeals court held that the employees' exposure to second-hand cigarette smoke was not an unusual physical hardship or unusual hazard, given that the exposure was an expected condition of employment usually involved in carrying out the duties of their positions, especially when those duties involved the caretaking or monitoring of inmates and second-hand smoke, as part of the ambient air, was commonly encountered indoors and outdoors where people worked or played. The court found that the employees' exposure to second-hand smoke was not an unusually severe working condition or an unusually severe hazard within the plain meaning of the statute mandating additional compensation for federal employees whose duties involved such severe conditions. The court held that at the time the statute was enacted, second-hand smoke was not considered unusually severe. (Federal Correctional Institution, Jesup, Georgia)

U.S. District Court
HARASSMENT
WORKING CONDITIONS

Akines v. *Shelby County Government*, 512 F.Supp.2d 1138 (W.D. Tenn. 2007). Female correctional officers brought Title VII, § 1983 and a Tennessee Whistleblower Act suit alleging hostile work environment arising from a county's indifference to sexual harassment of the officers by county jail inmates. The district court granted summary judgment to the county on the claims of certain officers. The county renewed its motion with respect to the remaining officers and the court granted it. The court held that the county's taking of appropriate disciplinary steps in response to reports of inmate harassment precluded a finding that it had fostered a hostile work environment in violation of Title VII. According to the court, the county was not deliberately indifferent to the rights of the female officers or a moving force behind the harassment, as required for a violation of § 1983. The court noted that the presence of one incident in which the institution apparently did not respond to a female correctional officer's filing of a disciplinary complaint against one inmate for alleged sexual harassment was insufficient to establish a hostile work environment in violation of Title VII, where the institution responded by disciplining inmates in connection with other reported incidents. (Shelby County Correctional Center, Tennessee)

U.S. District Court
RELEASE

Avalos v. *Baca*, 517 F.Supp.2d 1156 (C.D.Cal. 2007). A county jail detainee brought an action against a county sheriff and under-sheriff, alleging claims arising out of his over-detention and involuntary waiver of an over-detention claim. The defendants moved for summary judgment and the district court granted the motion. The court held that the defendants did not maintain an unconstitutional policy, practice, or custom of over-detention and that the sheriff and under-sheriff were not individually liable for the detainee's over-detention under § 1983. According to the court, evidence demonstrated that only 0.4 percent of persons released by the department during the relevant time period were over-detained, the department had taken steps to reduce the number of over-detentions in recent years, and the total number of over-detentions by the department had dramatically decreased over time. The court noted that the detainee had no freestanding constitutional right to be free of a coercive waiver of rights and that the detainee failed to establish that the county sheriff and others conspired to violate his constitutional rights. A member of the department's risk management team had approached the detainee and offered him $500 if he would release all claims. (Los Angeles County Sheriff's Department, California)

U.S. District Court
POLICIES/PROCEDURES

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 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. (Central Detention Facility. D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
APA- Administrative Procedures Act

Boulware v. *Federal Bureau of Prisons*, 518 F.Supp.2d 186 (D.D.C. 2007). A federal prisoner brought a pro se action against the Bureau of Prisons (BOP) and various BOP officials in their official and individual capacities, seeking to compel them to provide the prisoner with some of the marketable vocational opportunities provided to similarly situated offenders housed in other federal facilities. The defendants moved to dismiss and the court granted the motion. The court held that the court lacked subject matter jurisdiction to hear the Administrative Procedure Act (APA) claim. The court found that the prisoner failed to state a claim against individual BOP officials. According to the court, the prisoner did not have a liberty interest to participate in vocational programs of his choice as required to sustain a due process claim and the prisoner could not sustain an equal

protection claim. The court held that the BOP's failure to provide additional programs did not violate the prisoner's right to participate in programs. According to the court, the unavailability of a program at a particular prison is not an atypical deprivation of rights in violation of the due process clause, but rather merely leaves the prisoner with the normal attributes of confinement. (United States Bureau of Prisons' Rivers Correctional Institution ("RCI") in Winton, North Carolina)

U.S. District Court
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. District Court
RECORDS

Conklin v. *U.S. Bureau of Prisons*, 514 F.Supp.2d 1 (D.D.C. 2007). A federal inmate brought a pro se action against the Bureau of Prisons (BOP) under the Privacy Act alleging that the copy of his presentence investigation report (PSI) in the BOP's files contained incorrect statements about him, resulting in his classification as a "high custody" inmate. The district court granted the BOP's motion to dismiss. The court held that fact issues as to the date on which the prisoner knew or had reason to know of allegedly incorrect statements in the copy of his PSI in BOP files precluded dismissal as untimely. The court held that amendment of the copy of the inmate's PSI in BOP files was not an available remedy and damages were not an available remedy. (Beckley Federal Correctional Institution in Beaver, West Virginia)

U.S. District Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES
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 APA- Administrative Procedures Act	*Kotz* v. *Lappin*, 515 F.Supp.2d 143 (D.D.C. 2007). A federal prisoner moved for injunctive relief ordering the Bureau of Prisons (BOP) and BOP director to reverse its refusal for the second time to allow the prisoner to participate in a Residential Drug Abuse Program (RDAP) and receive a sentence reduction. The district court denied the motion. The court held that the RDAP statute did not grant the prisoner a liberty interest in the possibility of early release. The court found that the BOP program statement restricting early release for participation in RDAP to one time was an interpretive rule not subject to the Administrative Procedure Act (APA). (Federal Correctional Institute, Cumberland, Maryland)
U.S. District Court CONTRACT SERVICES	*Lee* v. *Corrections Corp. of America*, 525 F.Supp.2d 1238 (D.Hawai'i 2007). A Hawai'i prisoner, who was incarcerated in a Mississippi prison pursuant to a contract between Hawai'i and the private corporation that operated the prison, brought a § 1983 action against the corporation, the Hawai'i Department of Public Safety, and prison officials, arising from an incident in which the prisoner was allegedly beaten by other inmates. The defendants moved to transfer venue. The district court granted the motion, changing the venue to Mississippi. According to the court, the proper venue was Mississippi because the alleged beating, as well as the allegedly negligent monitoring, supervision, training, and hiring by the corporation and prison officials, all occurred in Mississippi. The court noted that convenience factors also supported the transfer of the action to Mississippi because all of the parties except for the Hawai'i Department of Public Safety were on the mainland, the majority of witnesses resided in Mississippi or on the mainland, and there was a local interest in having the controversy decided in Mississippi. The plaintiff alleged that he had been attacked by inmates confined with him in the Special Housing Incentive Program ("SHIP") unit when the cell doors in the segregation unit were inadvertently unlocked, which allowed the inmates to exit their cells. (Tallahatchie County Correctional Facility, Tutwiler, Mississippi. Operated by Corrections Corporation of America)
U.S. District Court POLICIES/PROCEDURES	*Meyer* v. *Nava*, 518 F.Supp.2d 1279 (D.Kan. 2007). A former prisoner brought a § 1983 action against a former employee at a county jail, a board of county commissioners, and a county sheriff, seeking damages for injuries suffered after being raped by a former jail employee while incarcerated at the county jail. The defendants moved for summary judgment. The district court granted the motion. The court held that a former jail employee who raped the prisoner was not a final policymaker and therefore the county could not be held liable under § 1983. The court noted that even though the employee had some discretion to place the prisoner in a particular area of the jail, he had no authority to make or change county policy, and all authority to establish policy otherwise remained with the sheriff. The court held that evidence was insufficient to show that the county sheriff possessed knowledge of an excessive risk to female inmates and that the sheriff was deliberately indifferent toward such a known risk, as would have subjected the sheriff to § 1983 liability for an Eighth Amendment violation of the former prisoner's right to be free from cruel and unusual punishment. According to the court, the employee's consensual actions with another female inmate, the actions of another male jailer with a femal inmate, and the employee's telephone calls to an inmate after her release did not constitute evidence demonstrative of the sheriff's knowledge of any violation of department policy or a substantial risk of serious harm to female inmates. The court held that the county board lacked any authority to supervise or discipline the county sheriff or his subordinates, as required to subject it to § 1983 liability. (Lyon County Jail, Kansas)
U.S. District Court EMPLOYEE QUALIFI-CATIONS	*Milwaukee Deputy Sheriffs Ass'n* v. *Clarke*, 513 F.Supp.2d 1014 (E.D.Wisc. 2007). A union and county sheriff's deputies brought a § 1983 action against a county sheriff, sheriff's captain and county alleging that the defendants violated the Establishment and Free Exercise Clauses of the Constitution. The plaintiffs were seeking an injunction barring the defendants from permitting any further presentations given by a religious group. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that inviting the religious organization to speak within the sheriff's department was an unconstitutional endorsement of religion. Before the leadership conference the sheriff had spoken of promotion criteria and distributed written material recommending that deputies surround themselves with people of faith. The court found that a sheriff's captain could be held liable under § 1983 for the department's Establishment Clause violation in endorsing the message of a religious organization composed of law enforcement officers because the captain took an affirmative role in setting up the organization's presentations and failed to take any action to alleviate the appearance of government endorsement of religion. However, the court held that evidence was insufficient to establish that the county sheriff had made Christianity a prerequisite for promotion in violation of Free Exercise Clause. The sheriff had distributed religious material prior to the leadership conference when he was speaking about promotion criteria. (Milwaukee County Sheriff's Department, Wisconsin)
U.S. District Court OVERTIME	*Mullins* v. *City of New York*, 523 F.Supp.2d 339 (S.D.N.Y. 2007). Police sergeants brought an action against a city and its police department to recover overtime compensation to which they were allegedly entitled under the Fair Labor Standards Act (FLSA), but for which they had not been paid. The sergeants moved for partial summary judgment on the issue of the defendants' liability. The district court granted summary judgment for the defendants in part and denied in part. The court held that the sergeants were exempt from FLSA as executives for the period governed by the "short test." According to the court, the primary duty of the police sergeants was management and therefore they were exempt from FLSA overtime pay requirements as executives for the period governed by the "short test." The court noted that although the sergeants spent most of their shifts working alongside their subordinates and performing many of the same law enforcement tasks, they were responsible for ensuring that their subordinates performed their assignments, and they were personally subject to discipline for failure to do so. The court denied summary judgment in part because of genuine issues of material fact as to whether the police sergeants had the authority to hire or fire other employees, or whether their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees were given particular weight. (New York City Police Department)

U.S. District Court
POLICIES/PROCEDURES

Murphy v. *Franklin*, 510 F.Supp.2d 558 (M.D.Ala. 2007). A pretrial detainee brought a § 1983 action against a sheriff and jail administrator, alleging that he was subjected to punitive, degrading and inhumane treatment when, without explanation, he was shackled hands-to-feet to the toilet in an isolation cell, and, on another occasion, shackled to his cot. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that although the detainee's complaint against the sheriff and jail administrator did not allege that he was subjected to mistreatment pursuant to any specific official policy, the detainee's allegations that the sheriff promulgated all policies and procedures in the county jail, that the detainee was placed in an isolation cell and shackled hands-to-feet to the toilet, which was nothing more than a hole in the ground covered by a grate, and that the sheriff ordered the detainee removed from this cell for an interview and then reshackled to the toilet grate, were sufficiently specific to state a § 1983 claim against the sheriff under the theory of supervisory liability. The detainee alleged that without explanation, he was moved into a 'lockdown' cell for one day, in which his right hand was cuffed to the frame of his cot and his right leg was shackled to the other end of the cot's frame. Again without explanation, he was allegedly then moved to an isolation cell, where he was shackled hands-to-feet to the toilet, which is actually nothing more than a hole in the ground. He alleged that he was held in this configuration for almost 12 days and was not released to allow urination or defecation, which caused him to soil himself, and that he was also not given any personal necessities such as clean, dry clothing, personal hygiene items, or bedding. (Elmore County Jail, Alabama)

U.S. District Court
OVERTIME

Murphy v. *Town of Natick*, 516 F.Supp.2d 153 (D.Mass. 2007). Police officers filed a complaint against a Massachusetts town, its police department, and the chief of police, on behalf of themselves and 54 other current and former patrol and superior officers employed by the town. The officers alleged willful violations of the Fair Labor Standards Act (FLSA), specifically, that the town failed to pay all the overtime they were due for hours worked in excess of 40 per week. The district court held that the town was required to include all wage augments in the calculation of the regular rate with the exception of an in-service training differential, and that the officers were to be paid FLSA overtime for performing town details. The court found that sergeants and lieutenants fell within the executive exemption to the FLSA overtime requirement, but that detectives did not. (Natick Police Department, Massachusetts)

U.S. Appeals Court
EMPLOYEE DISCIPLINE

Piscottano v. *Murphy*, 511 F.3d 247 (2nd Cir. 2007). Correctional employees brought a § 1983 action against state officials alleging that discipline imposed on them for associating with a motorcycle club violated their First Amendment and due process rights to freedom of expressive association and freedom of intimate association. The employees asserted a "void-for-vagueness" challenge to the regulation under which they were disciplined. The district court entered summary judgment for the state officials and the employees appealed. The appeals court affirmed. The court held that the conduct of three employees constituted expressive activity on a matter of public concern but the discipline of the three employees did not violate their freedom of expressive association. The court found that the regulation prohibiting correctional officers from engaging in behavior that could reflect negatively on the corrections department was not void for vagueness as applied to the three employees. The court noted that the motorcycle club was not an organization that spoke out on matters of public concern. According to the court, the state correctional employees' approval or endorsement of the club necessarily would constitute expressive conduct on a matter of public concern where the employee testified that what the club was "all about" riding motorcycles, having parties and having fun. According to the court, in a public employee's action alleging retaliation for exercising speech rights, evidence that harms or disruptions have in fact occurred are not necessary for the employer to justify an adverse employment action. The court found that the employer need only make a reasonable determination that the employee's speech creates the potential for such harms. (Connecticut Department of Correction)

U.S. District Court
BUDGET
CONDITIONS

Roberts v. *County of Mahoning, Ohio*, 495 F.Supp.2d 784 (N.D.Ohio 2007). Pretrial detainees and convicted prisoners being held in the custody of an Ohio sheriff at two correctional facilities that were allegedly understaffed and overcrowded brought a § 1983 class action against the county, sheriff, and county commissioners, alleging that conditions of confinement at those facilities were unconstitutional. The district court appointed a special master for the remedial phase of the litigation. A three-judge panel of the district court approved the proposed stipulated order. The district court held that the appointment of a special master had accomplished the court's original objective and the appointment would be terminated. The court noted that the special master's reports and other actions had fulfilled the requirement that he "assist the parties, specifically the Defendants, in attempting to find a solution to the problems which created the unconstitutional conditions in the Jail," and his fourth report had established a mechanism for the litigation's actual resolution. The first two reports addressed a narrowly avoided crisis that would have resulted from massive layoffs of security staff as a result of a budget shortfall in the county. The third report, filed after passage of a successful ballot issue increasing revenues available for the funding of the MCJC, described the parties' continued cooperation in attempting to resolve the problems facing the jail, in particular, the need for accelerated collection of the proceeds from the successful bond issue. The court concluded "These reports, to which no party filed any objection, were instrumental in establishing an informational foundation for discussions of possible remedies to the phenomenon of chronic and serious crowding in the jail." (Mahoning County Justice Center, Ohio)

U.S. Appeals Court
COMMISSARY
INMATE FUNDS

Rowe v. *Jones,* 483 F.3d 791 (11th Cir. 2007). Following settlement of county prisoners' § 1983 class action lawsuit against county officials, an inmate welfare fund was created. The district court dismissed the officials' motion to terminate a permanent plan for a charitable trust providing for donations from the fund. The officials appealed and the appeals court reversed and remanded with instructions. The court held that an order establishing a charitable trust funded by an inmate welfare fund, and a later order continuing the charitable trust were "consent decrees," rather than "private settlement agreements," under the Prison Litigation Reform Act (PLRA). The court noted that PLRA's termination provisions, limiting prospective relief, are applicable to consent decrees but not to private settlement agreements. The court noted that county officials did not sign

either the order or otherwise indicate their consent to the charitable trust, the orders bore the district judge's signature and the district court's official stamp, and the district court retained jurisdiction over the enforcement of the charitable trust in both orders. (Glynn County Detention Center, Georgia)

U.S. District Court
FOIA-Freedom of Information Act
RECORDS

Ruston v. *Department of Justice*, 521 F.Supp.2d 18 (D.D.C. 2007). A federal prison inmate sued the U. S. Department of Justice, seeking disclosure of records from a psychiatric examination. The department moved for summary judgment and the district court entered judgment for the department. The court held that an intelligence test protocol and a psychiatric test extended score report were exempt from disclosure under the Freedom of Information Act as confidential commercial information. (Metropolitan Detention Center, Los Angeles, California)

U.S. District Court
CONTRACT SERVICES
DISCRIMINATION

Safe Haven Sober Houses, LLC v. *City of Boston*, 517 F.Supp.2d 557 (D.Mass.2007). The operator of homes for recovering alcoholics and drug users, its executive director, and manager sued a city and its inspectional services department, alleging the department's regulatory and criminal enforcement actions against the operator and its officials violated nondiscrimination provisions of Massachusetts General Laws, the Fair Housing Act (FHA), the Americans With Disabilities Act (ADA), and the Rehabilitation Act. The plaintiffs filed a motion for a preliminary injunction to stay pending state court criminal proceedings. The district court denied the motion, noting that the plaintiffs failed to establish that other exceptional circumstances creating a threat of irreparable injury were both great and immediate, and that the Anti-Injunction Act (AIA) prevented the district court from enjoining pending criminal proceedings. (Massachusetts Housing Court Department, Boston Division and Safe Haven Sober Houses, LLC)

U.S. Appeals Court
APA-Administrative Procedures Act

Serrato v. *Clark,* 486 F.3d 560 (9th Cir. 2007). An inmate petitioned for a writ of habeas corpus and the district court denied the petition. The inmate appealed and the appeals court affirmed. The court held that the inmate suffered an injury in fact, as required for the inmate to have standing to bring a habeas petition challenging the decision of the Bureau of Prisons (BOP) to terminate his boot camp program, even though placement in boot camp was a discretionary decision made on an individual basis. The court noted that the decision denied the inmate the ability to be considered for a program that would have allowed her to serve only six months in prison. The court found that the decision of the BOP to terminate the boot camp program was committed to agency discretion by law, and thus was not susceptible to judicial review under the Administrative Procedure Act (APA). The inmate had only the recommendation by the judge that her eligibility for the discretionary program be evaluated and she had not earned any early release privileges when informed of the termination. (Federal Correctional Institution Dublin, California)

U.S. Appeals Court
INMATE FUNDS

Sickles v. *Campbell County, Kentucky*, 501 F.3d 726 (6th Cir. 2007). Inmates, former inmates, and relatives and friends of inmates brought a § 1983 action against two counties, challenging methods used by the counties to collect fees imposed on prisoners for the cost of booking and incarceration. The district court entered summary judgment for the counties and the plaintiffs appealed. The appeals court affirmed. The court held that the county was not required under the Due Process Clause to grant a predeprivation hearing to inmates prior to withholding a portion of money from their canteen accounts to pay the costs of booking, room, and board. The court found that the relatives lacked a property interest in the money they sent to inmates and that the counties did not violate the free speech rights of relatives of inmates in withholding money. According to the court, the county inmates had a property interest protected by the Due Process Clause in money withheld from their canteen accounts to pay the costs of booking, room, and board, but the county was not required under the Due Process Clause to grant a predeprivation hearing to inmates prior to withholding money from their canteen accounts where the amounts withheld were small, the risk of erroneous deprivation was minor in that withholding involved elementary accounting and was non-discretionary, the potential benefits of a hearing were small, and the government's interests of sharing costs and furthering offender accountability were substantial. The court also found that the county did not violate the free speech rights of relatives of inmates in withholding a portion of money that relatives had sent to the inmates for their canteen accounts, notwithstanding that if the money had not been withheld the inmates might have spent it making telephone calls. (Campbell County and Kenton County, Kentucky)

U.S. District Court
EMPLOYEE DISCIPLINE

Simmons v. *The G.E.O. Group, Inc.*, 528 F.Supp.2d 583 (E.D.N.C. 2007). An African-American employee at a private correctional detention facility sued his employer, claiming race discrimination under Title VII. The employer moved for summary judgment. The district court granted the motion. The court held that the employee, who was disciplined in connection with his guilty plea to driving while intoxicated (DWI) and failure to inform the facility of the charges until later confronted, was not similarly situated to a Caucasian coworker who had been charged with a misdemeanor offense of failing to obey a traffic officer. According to the court, the employee's complaint concerning the employer's smoking policy was not a protected activity under Title VII and could not form the basis for a retaliation claim. (G.E.O. Group, Inc., Rivers Correctional Institution, North Carolina)

U.S. District Court
FOIA-Freedom of Information Act
RECORDS

Smith v. *Federal Bureau of Prisons*, 517 F.Supp.2d 451 (D.D.C. 2007). A federal prisoner who had requested information from the Bureau of Prisons (BOP) several times under the Freedom of Information Act (FOIA) brought an action against the BOP, challenging the BOP's aggregation of the prisoner's FOIA requests and denial of his fee waiver request. The BOP brought a motion to dismiss or for summary judgment. The district court granted the motions. The court held that the prisoner was required to exhaust administrative remedies prior to seeking judicial review of BOP's aggregation of his FOIA requests, and that he was not entitled to a fee waiver. The court held that the prisoner was not entitled to a fee waiver for information he requested from the Bureau of Prisons (BOP) under the Freedom of Information Act (FOIA), where the prisoner did not specify the public interest that would allegedly be satisfied by disclosure of the requested information, identify the

government activity or operation on which the prisoner intended to shed any light, or explain how disclosure would contribute to the public's understanding of such activity or operation, as required by Department of Justice (DOJ) procedures for disclosure of records under FOIA. (BOP FCI Gilmer, West Virginia)

U.S. District Court
PRISONER ACCOUNTS
APA- Administrative Procedures Act

Stern v. *Federal Bureau of Prisons*, 515 F.Supp.2d 153 (D.D.C. 2007). A federal inmate brought an action against the federal Bureau of Prisons (BOP) challenging its statutory authority to promulgate a regulation through which it had established restitution payment schedules. The BOP requested that the court transfer the suit to the federal district wherein the inmate was incarcerated. The district court denied the transfer, holding that the convenience of the parties and the interest of justice did not weigh in favor of the transfer of venue. According to the court, the federal inmate's Administrative Procedure Act (APA) action against the federal Bureau of Prisons (BOP) would not be construed as a petition for a writ of habeas corpus, so as to justify a transfer of venue from the District of Columbia to the district within which the inmate was incarcerated. The court noted that the success of the inmate's claim would not have affected the fact or length of the inmate's confinement, but would only invalidate the BOP's restitution schedule. (Federal Bureau of Prisons, Jesup, Georgia)

U.S. District Court
FOIA- Freedom of Information Act
RECORDS

Toolasprashad v. *Bureau of Prisons,* 474 F.Supp.2d 14 (D.D.C. 2007). A requester brought an action under the Freedom of Information Act (FOIA) against the federal Bureau of Prisons (BOP), challenging the BOP's failure to produce more than 500 documents he allegedly gave a psychology intern at a federal correctional institution. The BOP moved for summary judgment and the district court granted the motion. The district court held that the BOP's search was reasonably calculated to locate all records responsive to the request, although the search failed to produce the more than 500 documents the requester allegedly gave a psychology intern, where BOP employees adequately described the searches and averred that all files likely to contain responsive records had been searched. (Federal Correctional Institution in Petersburg, Virginia)

U.S. Appeals Court
RECORDS
FOIA- Freedom of Information Act

Trentadue v. *Integrity Committee*, 501 F.3d 1215 (10th Cir. 2007). A citizen, the brother of a federal prisoner who was discovered hanged in his cell, filed an administrative complaint with the Integrity Committee (IC), a subdivision of the President's Council on Integrity and Efficiency (PCIE). The plaintiff alleged misconduct by the Office of the Inspector General (OIG) of the United States Department of Justice (DOJ) in reviewing the investigation into the prisoner's death, and later filed a request for various documents pursuant to the Freedom of Information Act (FOIA). The plaintiff subsequently filed a complaint in federal district court, seeking a set of documents submitted by the IG to the IC. The district court granted summary judgment in favor of the IC, finding that the IG's submission was properly withheld under FOIA exemption 7(A) because its disclosure could reasonably be expected to interfere with enforcement proceedings. The plaintiff appealed and also pursued a separate FOIA case in federal court. After it was determined that the DOJ's Public Integrity Section was no longer conducting an investigation, the appeals court vacated the district court's grant of summary judgment and remanded. On remand, the district court found that the documents could be withheld under exemptions 5, 6, and 7(C). The citizen appealed. The appeals court reversed in part and remanded, holding: (1) those portions of the IG's cover letter stating historical facts about the OIG's investigation and listing the individuals involved in preparing the OIG's response to the IC were not protected by exemption 5; (2) that portion of the IG's response providing general background information on the prisoner's death and the subsequent investigations and lawsuits was unprotected by exemption 5; (3) with the exception of a few recommendations, the IG's substantive, factual responses to plaintiff's discrete allegations were not protected by exemption 5; (4) those portions of the IG's response which answered the plaintiff's allegations with respect to specific individuals who already had been publicly identified were not protected by exemption 6; (5) even if the records at issue were compiled by the IC for reasons of law enforcement, the relevant public interest outweighed any privacy concerns with respect to the bulk of the information, so that it was not protected by exemption 7(C), the exemption for law enforcement records. (Federal Transfer Center in Oklahoma City, Oklahoma)

U.S. District Court
POLICIES/PROCEDURES

Wakat v. *Montgomery County*, 471 F.Supp.2d 759 (S.D.Tex 2007). The estate of inmate who died in a county jail brought a § 1983 action against the county, jail physician, and other county personnel. The defendants moved for summary judgment. The district court held that the county was not liable based on a county policy, the county was not liable for failure to train or supervise county jail personnel, and a physician did not act with deliberate indifference to the inmate's serious medical needs. The court held that the county sheriff was not liable in his individual capacity under § 1983 to the estate of the inmate absent a showing that he participated in any of the alleged activities in any individual capacity. According to the court, the county was not liable to the estate under § 1983 for deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment, since the county policy did not directly cause county personnel to fail to seek physician approval to reinitiate the inmate's prescription medication. The court noted that although the jail had a written policy of abruptly discontinuing any narcotic medications when inmates were initially processed for booking, regardless of whether the inmate had a valid prescription for the narcotic, the jail also had a policy allowing the narcotic medications to be reinstated with the permission of a doctor. (Montgomery County Jail, Texas)

U.S. District Court
POLICIES/PROCEDURES

West v. *Frank*, 492 F.Supp.2d 1040 (W.D.Wis. 2007). A prisoner sued prison officials under § 1983, alleging that they violated his speech and equal protection rights by enforcing a policy prohibiting prisoners from receiving publications in the mail. The prisoner wanted to stay abreast of the nation's current events while he was incarcerated and had subscribed to *USA Today* using his own funds.

Authorities at the Wisconsin Secure Program Facility where the prisoner was incarcerated refused to deliver the newspaper. The officials moved for summary judgment. The court granted the motion. The court held that the officials who had no involvement in the adoption or implementation of the policy could not be liable under § 1983 for any violation of the prisoner's speech rights that occurred when the policy was applied to him. The court held that genuine issues of material fact existed as to whether the prison violated the prisoner's free speech rights by enforcing its policy against him, instituted as part of a behavior modification program, precluding summary judgment. But the court found that the action was moot, where the state had abandoned the policy, and the prisoner had been transferred from the only prison in the state that imposed such a policy. (Wisconsin Secure Program Facility)

2008

U.S. District Court
POLICIES/PROCEDURES

Abdullah v. *Washington*, 530 F.Supp.2d 112 (D.D.C. 2008.) An inmate filed a § 1983 action seeking damages for violation of his Eighth Amendment rights stemming from his alleged exposure to second-hand tobacco smoke while confined at a District of Columbia detention facility. The district court granted summary judgment in favor of the defendants. The court held that the plaintiff's expert's testimony failed to demonstrate a causal relationship between environmental tobacco smoke (ETS) and the increased risk of harm to the inmate. The court noted that the expert was a biophysicist, not a medical doctor, never went to the jail, and never examined the inmate or his medical records. The court held that the officials were not deliberately indifferent to the health risks caused by environmental tobacco smoke (ETS), even if the officials inadequately enforced no-smoking rules, where a non-smoking policy was in existence during the inmate's incarceration, and the jail was undergoing extensive renovation to improve air quality, including the ventilation system. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. District Court
RECORDS

Alabama Disabilities Advocacy Program v. *Wood*, 584 F.Supp.2d 1314 (M.D.Ala. 2008). A disabilities advocacy program brought a suit against the director of the Alabama Department of Youth Services (DYS) seeking access to residents, facilities, staff and records under federal law. The parties filed a joint motion seeking court approval of a settlement. The court held that the limitations under the Prison Litigation Reform Act (PLRA) on prospective relief concerning conditions had no application because the suit was not concerned with conditions of confinement or effects of actions by officials on confined juveniles. The court also found that the advocacy group was not subject to the limitations on prisoner suits under PLRA. The court held that the settlement of the suit was fair, adequate, reasonable and not illegal or against public policy, and thus warranted the requested court approval. According to the court, the agreement contained a detailed plan for facilitating access, a process for dispute resolution between the parties, and a provision for the court's retaining jurisdiction for one year for the limited purpose of enforcing compliance. (Alabama Department of Youth Services)

U.S. District Court
POLICIES/PROCEDURES

Alves v. *Murphy*, 530 F.Supp.2d 381 (D.Mass. 2008). A person who had been civilly committed as a sexually dangerous person (SDP) brought a civil rights action alleging that treatment center officials placed him at a risk of harm by not adhering to certain mandatory procedures prior to implementing a double-bunking policy. The plaintiff also alleged that the officials violated equal protection principles by granting privileges to certain residents at the center, but not to others. A magistrate judge dismissed the action. The judge held that failure of the state treatment center to follow its own procedures regarding double-bunking, standing alone, was not a sufficient basis for a § 1983 claim. The court noted that the First Circuit analyzes the constitutional claims of pretrial detainees, who, like civil committees, may not be punished, under the Due Process Clause of the Fourteenth Amendment. But, according to the court, the court draws on Eighth Amendment jurisprudence and applies the "deliberate indifference" standard when analyzing a pretrial detainee's failure-to-protect claims. (Massachusetts Treatment Center)

U.S. District Court
EMPLOYEE QUALIFICATIONS
WORKING CONDITIONS

Anderson v. *Nassau County Dept. of Corrections*, 558 F.Supp.2d 283 (E.D.N.Y. 2008). A female county correctional employee, a sergeant, brought a Title VII action against a county department, lieutenant, undersheriff, and sheriff, alleging she was passed over for promotion to the rank of lieutenant in violation of § 1983, Title VII, and the New York State Human Rights Law (NYSHRL). The district court held that summary judgment for the defendants on the hostile work environment claims was precluded by a triable issue of fact as to whether the employee's treatment was severe and pervasive. The court also found triable issues of fact as to how many promotions were made after the employee became eligible for the rank of lieutenant, the reasons for failure to promote her, and the defendants' intent in selecting the persons who were promoted. (Nassau County Sheriff's Department, New York)

U.S. Appeals Court
EMPLOYEE DISCIPLINE
HARASSMENT

Argyropoulos v. *City of Alton*, 539 F.3d 724 (7th Cir. 2008). A former city employee who had worked as a jailer brought a Title VII action against the city and former coworkers alleging sexual harassment and retaliation, and brought a § 1983 claim alleging that the city's failure to provide a pre-termination hearing denied her of due process. The district court granted summary judgment for the defendants and the employee appealed. The appeals court affirmed. The court held that the city's admission that the employee's surreptitious recording of a meeting was a significant factor in her dismissal did not amount to direct evidence of retaliation. The court found that a seven week interval between the employee's sexual harassment complaint and her subsequent arrest and termination, without more, did not amount to direct evidence of retaliation. According to the court, the employee did not show that she was performing her duties satisfactorily. The court's opinion began with the assertion that the employee's "turbulent tenure as a jailor…lasted just ten months…" (Alton Police Department, Illinois)

U.S. Appeals Court
APA- Administrative Procedures Act

Arrington v. *Daniels*, 516 F.3d 1106 (9th Cir. 2008). Prisoners filed numerous petitions for a writ of habeas corpus, asserting that a regulation implemented by the federal Bureau of Prisons (BOP) violated the Administrative Procedure Act (APA) by categorically excluding prisoners convicted of offenses involving possession, carrying, or use of firearms from early release for the successful completion of a residential substance abuse program. The district court denied the petitions and the prisoners appealed. The appeals court reversed and remanded. The court held that the regulation was invalid under the Administrative Procedure Act (APA), since the BOP failed to articulate a rationale for the regulation so as to provide a means for reviewing the reasonableness of the agency's categorical exclusion of a class of nonviolent offenders from eligibility for early release. The court noted that the BOP's general desire for uniformity in the application of the regulation did not explain why the exclusion rule was promulgated, as the uniformity could have been accomplished in any number of ways. (Sheridan Correctional Institution, Federal Bureau of Prisons, Oregon)

U.S. District Court
EMPLOYEE UNION
OVERTIME
STAFFING LEVELS

Balas v. *Taylor*, 567 F.Supp.2d 654 (D.Del. 2008). The executrix of the estate of a state department of corrections (DOC) employee, who committed suicide, brought a § 1983 action against the DOC and the employee's supervisors, alleging that the employee's suicide was proximately caused by the defendants' retaliation in violation of the First and Fourteenth Amendments. The court held that resignation from a special emergency unit by the employee was "symbolic speech" protected by the First Amendment, supporting the First Amendment retaliation claim brought by the executrix of the employee's estate. The court noted that, at the time of the resignation, the DOC and a labor union were in the middle of contract negotiations, and the extent to which the prisons were understaffed and the imposition of mandatory and voluntary overtime were major issues in the dispute. According to the court, the resignation of the employee along with other members of the emergency unit was meant to communicate their lack of support for overtime to prison management, and the employee's resignation from the unit was not pursuant to his suit and yet elected amounted to a refusal to perform his duties. The court held that summary judgment was precluded by genuine issues of material fact as to whether the employee's resignation was a substantial or motivating factor in the alleged retaliatory actions taken against the employee, which included poor performance reviews, and whether the same alleged adverse actions would have taken place in the absence of the protected conduct.

The court found that the employee's supervisor was not entitled to qualified immunity for his alleged conduct of giving the employee a mediocre performance evaluation with falsified criticism and taking other retaliatory action against the employee, because of the employee's protected activities of supporting his labor union, refusing to cross a picket line, and resigning from a special prison emergency unit. According to the court, the alleged conduct was retaliatory, and a reasonable official in the supervisor's position could not have believed that his actions were constitutionally permissible, as clearly established law prohibited retaliation for union membership and activity, and exercise of First Amendment rights. (Correction Emergency Response Team, Sussex Correctional Institute, Delaware)

U.S. District Court
DISCRIMINATION
UNION

Bergeron v. *Cabral*, 535 F.Supp.2d 204 (D.Mass. 2008). Corrections officers filed a § 1983 action alleging that a sheriff's revocation of their commissions as deputy sheriffs shortly after her election constituted retaliation and political discrimination in violation of their First Amendment rights. The sheriff moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the revocation was of sufficient consequence to constitute an "adverse employment action." The court held that summary judgment was precluded by fact issues as to whether the sheriff's decision to revoke the officers' commissions as deputy sheriffs was motivated by their dissemination of letters and a press release during a political campaign, which would indicate that the sheriff engaged in political discrimination. The court noted that the commission was discretionary, unremunerated and was not a requirement for service as a corrections officer. The commission had no bearing on the officers' work hours, vacation days, or job assignments, but its revocation resulted in the diminution of the officers' status, and deprived them of the opportunity to supplement their income by working private details. The court found that the sheriff's interest in maintaining order and discipline among her officers outweighed any legitimate interest of the corrections officers in promoting their union's bargaining position by publishing allegations of the sheriff's malfeasance during an election campaign, and therefore the sheriff's alleged retaliation against union officers did not violate the First Amendment. (Suffolk County Sheriff, Massachusetts)

U.S. District Court
POLICIES/PROCEDURES

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
DISCRIMINATION
HARASSMENT

Brown v. *New York State Dept. of Correctional Services*, 583 F.Supp.2d 404 (W.D.N.Y. 2008). A correctional officer brought an action against the New York State Department of Correctional Services (DOCS) and several other institutional and individual defendants, alleging race discrimination and harassment in violation of Title VII, § 1981, § 1983, and the New York State Human Rights Law (NYSHRL). The district court granted summary judgment for the defendants in part and denied in part. The court held that: (1) the officer satisfied the personal involvement requirement for stating a § 1981 hostile work environment claim against his co-workers; (2) the alleged harassment by his co-workers was not done under color of law for the purposes of a § 1983 claim; (3) the officer's complaints to supervisors about alleged discrimination and harassment based on his race did not constitute speech protected under § 1983 and did not relate to matters of public concern; (4) the officer's state law claims against individual state officials and employees were barred by the election-of-remedies provision in NYSHRL; (5) genuine issues of material fact existed as to whether the actions and statements of

his co-workers created a hostile work environment under Title VII; (6) genuine issues of material fact existed as to whether the DOCS took appropriate steps to put an end to the alleged harassment; and (7) genuine issues of material fact existed as to whether his co-workers and supervisors acted with retaliatory animus. (Elmira Correctional Facility, New York)

U.S. Appeals Court
POLICIES/PROCEDURES

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 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
INMATE FUNDS

Burns v. *PA Dept. of Correction*, 544 F.3d 279 (3rd Cir. 2008). An inmate brought a § 1983 due process claim against a state department of corrections and prison officials arising out of the prison's disciplinary proceedings. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded. The court held that as a matter of first impression, the department of corrections' assessment of the inmate's institutional account, even absent an attempt to deduct funds from it, constituted a deprivation of a protected property interest for the purposes of procedural due process. The court found that the Department of Corrections' voluntary promise to refrain from the future seizure of funds from the inmate's account, in a letter submitted more than three years after it originally assessed that account for medical and other fees, did not render the inmate's appeal of his procedural due process claim moot. The court noted that the alleged violation was complete at the moment the inmate was deprived of a property interest without being afforded the requisite process, and, if proven, would entitle the inmate to at least an award of nominal damages. The inmate had been disciplined for assaulting another inmate and he lost his prison job, good time credits, and was assessed for medical costs for the inmate who was injured. (SCI-Graterford, Pennsylvania Department of Corrections)

U.S. Appeals Court
OVERTIME
POLICIES/PROCEDURES

Carlsen v. U.S, 521 F.3d 1371 (Fed Cir. 2008). Federal employees of the Bureau of Prisons brought an action against United States under the Federal Employees Pay Act (FEPA) alleging that they were entitled to be paid for overtime that they had worked. The United States Court of Federal Claims granted judgment for the United States and the employees appealed. The appeals court affirmed. The court held that the occasional or irregular overtime work allegedly performed by the Bureau of Prisons employees who worked in a secure environment was not subject to compensation under FEPA unless the overtime was directed or approved in writing by a person authorized to approve such overtime. The court noted that the employees worked in a setting in which they were required to follow all orders, written or oral. The court found that documents such as agency manuals, standards of conduct and training documents which emphasized that employees were required to follow orders of their superiors, when considered together with verbal directives that had the effect of requiring employees to work outside their scheduled shifts, did not constitute express written directives or orders to the employees to work overtime. According to the court, documents such as emails of employees' performance standards and emails from a warden's secretary and announcements of times and places of meetings that the employees were expected to attend did not constitute sufficient written orders to the employees to work overtime. The court ruled that the time that employees spent waiting in a key line did not constitute overtime work. However, the court found that "post orders" that defined employees' duties for each shift by inherently requiring the presence of two employees, one of whom was off-duty, in order to exchange information and equipment at change of shifts, did constitute written orders to work overtime, but the tasks for which an employee was entitled to overtime credit, which amounted to less than ten minutes per day, were de minimis. (Federal Bureau of Prisons)

U.S. District Court
FOIA-Freedom of Information Act
RECORDS

Coleman v. *Lappin*, 535 F.Supp.2d 96 (D.D.C. 2008). A federal inmate brought an action under the Freedom of Information Act (FOIA) challenging the Federal Bureau of Prisons' (BOP) refusal to confirm or deny the existence of records relating to a former BOP employee who filed a disciplinary report against him. BOP officials moved for summary judgment. The district court denied the motion. The court held that disciplinary records pertaining to the employee did not, as a matter of law, fall within the FOIA exception for law enforcement records, even though the employer was subject to the BOP's standards of employee conduct, and the inmate's allegations might warrant an official investigation pursuant to those standards. (Federal Bureau of Prisoner, D.C.)

U.S. Appeals Court
EMPLOYEE
QUALIFICATIONS

Dargis v. *Sheahan*, 526 F.3d 981 (7th Cir. 2008). A county corrections officer, who was placed on leave without pay after he returned to work following a stroke, brought an action against the county sheriff's department, county sheriff, and others, alleging violation of his due process rights, and violation of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the officer on

the due process claims, granted summary judgment in favor of defendants on the ADA claims, and dismissed the state law claims. The officer appealed. The appeals court affirmed. The court held that the officer, who had suffered a stroke, failed to establish an ADA discrimination claim because he could no longer perform the essential functions of the position of corrections officer. The court noted that the officer's physician advised that he could no longer have contact with inmates, could have no physical contact, no physical activity other than sitting in a chair with brief episodes of standing and walking, no lifting, kneeling, stooping, or running, and must have a work environment with adequate heat and air conditioning. The sheriff's office had stated that correctional officers are primarily responsible for maintaining vigil, standing watch over inmates, counting inmates, breaking up fights among inmates, inspecting for contraband, escorting inmates outside their cells, searching inmates and visitors, and searching for escaped inmates. Although there are some positions requiring less inmate contact than others, the sheriff's office asserted that all officers, regardless of the position to which they were assigned, must be able to respond to emergencies such as riots or escapes, and must be able to rotate through various positions as needed. This requirement, often occurring due to unforeseeable events, meant that the Sheriff's Office was unable to guarantee that any assignment would shield an officer from all inmate contact. (Cook County Sheriff's Office of Corrections, Illinois)

U.S. Appeals Court
EMPLOYEE DISCIPLINE
EMPLOYEE UNION

Davignon v. *Hodgson*, 524 F.3d 91 (1st Cir. 2008). County corrections officers brought a § 1983 First Amendment retaliation action against a sheriff in his individual and official capacities, alleging that disciplinary actions taken by the sheriff had been motivated by the officers' union activities. The officers also asserted state-law civil rights and tort claims. The district court entered judgment on a jury verdict against the sheriff on the § 1983 claims against him in his official capacity, and against the sheriff on some state-law claims. The sheriff appealed. The appeals court affirmed. The court held that the officers' private speech to coworkers concerning a planned picket, whose stated purpose was to allow union members to publicly express criticism of management and to alert the public to the behavior of the sheriff was on a matter of public concern. According to the court, there was no evidence of actual or potential disruption from the officers' brief statements to coworkers concerning a planned picket by the union, and conversely there was ample evidence that the officers had been suspended because of their pro-union activity rather than for reasons of disruption of public safety. The court held that the attorney fee award to the officers' attorneys of approximately $172,000 was not excessive, even though the back-wages damages award was only approximately $18,000. According to the court, the award under a civil rights attorney fee statute did not necessarily have to be proportionate to the amount of damages. The court also held that the officers' lack of success on one of their claims did not preclude the fee award because the officers were successful on the claim that had propelled the litigation. (Bristol County Sheriff's Office, Massachusetts)

U.S. District Court
CONTRACT SERVICES
RECORDS

Davis v. *Dallas County, Tex.*, 541 F.Supp.2d 844 (N.D.Tex. 2008). Inmates filed a state court action alleging that a new computer system designed and installed by a county and contractors prevented county officials from receiving relevant inmate information, causing them to be retained beyond their correct release dates. The case was removed to federal court. The district court denied the contractor's motion to dismiss. The court held that the contractor had a duty of care to the inmates to ensure that they were not incarcerated beyond their proper term, and fact issues remained as to whether the county's negligent reliance on a new computer system was the concurrent, rather than the superseding, cause of the inmates' detention. (Dallas County, Jail, Texas)

U.S. District Court
DISCRIMINATION
WORKING CONDITIONS

DuBerry v. *District of Columbia*, 582 F.Supp.2d 27 (D.D.C. 2008). A former employee brought an action against the D.C. Department of Corrections, alleging that the department discriminated against him on the basis of his disability in violation of the Americans with Disabilities Act (ADA), Title VII, § 1983, § 1981, and the D.C. Human Rights Act. The district court granted summary judgment to the parties in part and denied in part. The court held that the employee sufficiently exhausted his ADA claims and that there was sufficient evidence to allow a reasonable jury to conclude that the department discriminated and retaliated against the employee. The court also found that evidence was sufficient to allow a reasonable jury to conclude that the department's proffered reasons for termination and refusal to rehire were pretextual. The court held that the department did not violate Title VII, § 1983 or § 1981. The former employee had been diagnosed with diabetes and his condition required him to eat meals at designated times and prevented him from skipping meals. He was transferred to the third shift and he requested an accommodation because he believed working that shift would be incompatible with the diabetes treatment regimen prescribed by his physician. The Department denied his accommodation request and transferred him to the third shift. He was eventually transferred to the first shift after using 208 hours of sick leave during his first three months on the third shift. When he was later denied a promotion, he filed an EEOC complaint. (District of Columbia Department of Corrections)

U.S. Appeals Court
POLICIES/PROCEDURES

Ford v. *County of Grand Traverse*, 535 F.3d 483 (6th Cir. 2008). A state inmate brought a § 1983 action against jail officials and the county claiming, among other things, that the county's policy or custom regarding the provision of medical care at the jail on weekends reflected deliberate indifference to her medical needs and caused injuries resulting from a fall from the top bunk in her cell when she had a seizure. After a jury found against the county, the district court denied the county's motions for judgment as a matter of law. The county appealed. The appeals court affirmed, finding that sufficient evidence existed for reasonable minds to find a direct causal link between county's policy of permitting jail officials to "contact" medical staff simply by leaving a medical form in the nurse's inbox, even though a nurse might not see the notice for 48 hours, and the alleged denial of the inmate's right to adequate medical care, allegedly leading to the inmate suffering a seizure and falling from a top bunk. According to the court, the deposition testimony of a doctor provided a basis for finding that the inmate would not have suffered a seizure had she been given medication within a few hours of her arrival at the jail. The inmate, a self-described recovering alcoholic who also suffers from epilepsy, was arrested on a probation violation and taken to the jail. That afternoon, she had a seizure, fell from the top bunk of a bed in her cell, and sustained significant injuries to her right hip and right clavicle. Her case proceeded to

trial and the jury found that none of the jail officials were deliberately indifferent to her serious medical needs, but determined that the county's policy regarding weekend medical care exhibited deliberate indifference to, and was the proximate cause of, her injuries. The jury awarded her $214,000 in damages. (Grand Traverse County Jail, Michigan)

U.S. District Court
WORKING CONDITIONS

Garcia Rodriguez v. *Laboy*, 598 F.Supp.2d 186 (D.Puerto Rico 2008). Employees of a correctional facility brought a § 1983 action alleging Fourth and Fourteenth Amendment violations against canine unit officers of the Puerto Rico Correction Department, individually and in their official capacities. The employees challenged the officers' alleged public strip searches involving narcotics dogs and body cavity searches. The court granted two officers' motion to dismiss. The employees challenged searches that required them to make a line where narcotics dogs would sniff them. If the dogs alerted to the presence of narcotics, the employees would be subject to a strip search. However, the employees had to sign release forms before the strip search, and were forced to do so without time to read the forms and under the threat of losing their jobs. Then, the employees were required to undress and subject themselves to a body cavity search. The searches took place in areas to which the public, other employees, and inmates had access to, where they were able to witness the process. The court noted that when conducting these types of searches, officers of the Canine Unit violated several of the internal regulations of the Unit. The regulations required the officers to take every person searched before a supervisor, write a memorandum about each search, and ensure that the area of inspection was not contaminated prior to that particular search. Also, the search had to be limited to a physical search. The court noted that the officers of the Canine Unit searched over thirty employees, but never found any controlled substances. (Correction Department of the Commonwealth of Puerto Rico, Correctional Complexes of Guayama 500 and Las Cucharas)

U.S. Appeals Court
EMPLOYEE QUALIFICATION
OVERTIME
STAFFING LEVELS

Henry v. *Milwaukee County*, 539 F.3d 573 (7th Cir. 2008). Female corrections officers brought a Title VII action against a county, challenging a staffing policy that reduced the number of shifts available to them at a juvenile detention center, and alleging other incidents of discrimination as well as retaliation. Following a bench trial, the district court entered judgment for the county. The officers appealed. The appeals court affirmed in part, reversed and remanded in part. The court held that a sex-based classification, requiring that each unit in the juvenile detention center be staffed by at least one officer of the same sex as the detainees in the unit, was not reasonably necessary for the rehabilitation, security, or privacy functions of the facility, with respect to the third shift when only one officer was present on each unit. According to the court, the classification was therefore not a bona fide occupational qualification (BFOQ), so as to be exempt from Title VII. The court noted that no staff-on-inmate sexual assaults had occurred, the county had not investigated alternatives to same-sex staffing, juvenile privacy concerns were not limited to the third shift, and the effectiveness of role-modeling programs did not require the presence of a same-sex staff member at all times. The court found that the reduction in overtime hours available to female officers resulting from the policy was an adverse employment action within the meaning of Title VII, in that overtime pay had been a significant and expected component of the female officers' compensation, and the policy had the greatest effect on the third shift, which provided the majority of overtime work and a pay premium. The court held that the incidents alleged by the female officers, such as being told not to wear sweaters or to eat in front of the juveniles, unspecified "intimidation" and door slamming by the head of a shift, missing or marked up time-cards, occasional early morning phone calls, and not being assigned to work together on same the shift or in easier pods, if proven, did not rise to the level of an adverse action under the anti-retaliation provision of Title VII. (Milwaukee County Juvenile Detention Center, Wisconsin)

U.S. Appeals Court
HARASSMENT
WORKING CONDITIONS
DISCRIMINATION

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. District Court
FOIA-Freedom of Information Act
RECORDS

Hidalgo v. *F.B.I.*, 541 F.Supp.2d 250 (D.D.C. 2008). A federal prison inmate brought a Freedom of Information Act (FOIA) suit against the Federal Bureau of Investigation (FBI), seeking information regarding a paid government informant, including the amount of payments made to the informant and the FBI's interventions on the informant's behalf in criminal cases. The district court held that the payment information was not protected from disclosure under FOIA's "internal personnel rules" or "circumvention of the law" exemptions and that the FBI's file on the confidential informant was not protected under FOIA's "personnel and medical files" or law enforcement/personal privacy exemptions. But the court held that the information provided to the FBI by the informant regarding the subjects of an investigation was protected under FOIA's "expected to interfere with enforcement proceedings" exemption. The court noted that the inmate "…has pursued the documents at issue for a decade, at one point with the pro bono assistance of a former Solicitor General of the United States." (Federal Bureau of Investigation, D.C.)

U.S. District Court
DISCRIMINATION
EMPLOYEE QUALIFICATIONS

Jo v. *District of Columbia*, 582 F.Supp.2d 51 (D.D.C. 2008). A lieutenant with the District of Columbia Department of Corrections commenced a § 1983 action against the District, three District employees, and others, alleging that he was denied a promotion to the rank of captain because of his South Korean descent. The defendants moved for summary judgment. The district court granted the motion, finding that the District demonstrated a legitimate, nondiscriminatory reason for its decision not to promote the lieutenant and that the decision was not pretextual. The court also found that the lieutenant failed to demonstrate the existence of any policy. The court noted that the use of the lieutenant's picture on a recruitment poster that contained the phrase "Professional Dedicated to Duty" did not give rise to an inference of discrimination, on account of the lieutenant's South Korean descent. According to the court, there was no evidence that the persons selected for depiction in the poster were the most qualified lieutenants in the Department, and other individuals depicted in the poster were not even supervisory employees. (D.C. Department of Corrections)

U.S. District Court
INMATE FUNDS

Johnson v. *Ozmint*, 567 F.Supp.2d 806 (D.S.C. 2008). A state prison inmate brought a state court § 1983 action against the director of a state's department of corrections, alleging improper debiting of his trust account to pay for legal copies and postage, improper classification, improper conditions of confinement, and denial of rehabilitative opportunities. The director removed the action to federal court. The district court granted summary judgment for the director and remanded. The court held that the state corrections department's policy of debiting prison inmates' trust accounts to cover the cost of all legal correspondence did not infringe upon theinmate's right of access to courts under the Due Process Clause, where the inmate was not denied the use of a writing instrument, paper or postage for legal mail. The court noted that the department had provided notice of its policy to debit accounts for the costs of such correspondence, the department had a compelling interest in maintaining an orderly assessment process, the inmate could contest any allegedly erroneous assessment via the prison grievance process, and the state offered an adequate post-deprivation remedy. (South Carolina Department of Corrections)

U.S. District Court
EMPLOYEE UNION

Justice v. *Danberg*, 571 F.Supp.2d 602 (D.Del. 2008). An employee of the Delaware Department of Corrections (DOC) brought an action pursuant to § 1983 against the DOC and its commissioner and director of human resources, alleging a denial of promotion in retaliation for his involvement in union activities, in violation of the First Amendment. The district court held that the employee was acting as a citizen when participating in union activities, the employee's participation in union negotiations was of considerable concern to the community, and the employee's interest in participating in union negotiations outweighed the DOC's interest in the efficiency of its public service operations. The court held that summary judgment was precluded by fact issues as to whether the employee's participation in union activities was the substantial motivating factor in the DOC's failure to promote him and as to whether the employee's union activity was a motivating factor in the loss of his application for promotion. (Delaware Department of Correction, Morris Community Correctional Center)

U.S. Appeals Court
CONTRACT SERVICES

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
EMPLOYEE DISCIPLINE

McCann v. *Tillman*, 526 F.3d 1370 (11th Cir. 2008). An employee, a correctional officer, brought suit against an employer alleging she was subject to race discrimination and retaliation under § 1981 and § 1983, with respect to matters of employment discipline, compensation, a lowering of service rating, failure to promote, and failure to reassign or transfer. The employee also alleged that she was subject to a hostile work environment. The district court granted the employer's motion for summary judgment on all claims. The officer appealed. The appeals court affirmed. The court held that the employee was not similarly situated to white employees who were allegedly treated more favorably, as required for a race discrimination claim under Title VII. Neither of the employee's comparators committed similar or more serious offenses as those committed by the employee, including violating a uniform directive, or abusing the indicia or privileges of their office. The court found that the employer's policy that employees who were suspended could not recover for their unpaid leave by working overtime upon their return to work was a legitimate, nondiscriminatory reason under Title VII for restricting the employee from working overtime. According to the court, the employer's reasons for giving the employee an unsatisfactory service rating were not a pretext for unlawful retaliation under Title VII. The employer cited the employee's chronic tardiness, her manner of requesting leave by calling in, and her suspension. The court also held that the alleged instances of racially derogatory language, extending over a period of more than two years, were too sporadic and isolated to establish that the employer's conduct was so objectively severe or pervasive as to constitute a hostile work environment under Title VII. (Mobile County Jail, Alabama)

U.S. Appeals Court
POLICIES/PROCEDURES

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. (Roane County Jail, Tennessee)

U.S. District Court
POLICIES/PROCEDURES

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. Appeals Court
POLICIES/PROCEDURES

Roe v. *Crawford*, 514 F.3d 789 (8th Cir. 2008). An inmate brought a class action against corrections officials challenging the Missouri Department of Corrections (MDC) policy prohibiting transportation of pregnant inmates off-site for elective, non-therapeutic abortions. The district court determined that the MDC policy was unconstitutional and entered judgment for the inmate. Corrections officials appealed. The appeals court affirmed. The court held that the MDC policy could not withstand scrutiny under *Turner*. The court noted that even if the MDC policy rationally advanced the prison's legitimate security interests, the policy acted as a complete bar to elective abortions. The prison policy allowed transportation "outcounts" to outside facilities only for medically necessary therapeutic abortions due to a threat to the mother's life or health. According to the court, obtaining an abortion prior to incarceration was not a valid alternative means of exercising the right. According to the court, the MDC policy did not reduce the overall number of outcounts and so did not reduce any strain on financial or staff resources, and ready alternatives to the MDC policy existed including reverting to the previous policy of allowing outcounts for elective abortions. (Missouri Department of Corrections, Women's Eastern Reception, Diagnostic and Correctional Center)

U.S. District Court
CONTRACT SERVICES

Sauve v. *Lamberti*, 597 F.Supp.2d 1312 (S.D.Fla. 2008). A former prisoner brought a § 1983 action against a sheriff and correctional health services corporation, alleging that the defendants denied the prisoner access to medications while he was incarcerated. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to the extent that a doctor employed by the corporation with which the county contracted for correctional health care services was aware of the prisoner's history of drug problems, mental health issues, and prior noncompliance with treatment at the time of his decision not to place the prisoner on medication. The court also found genuine issues of material fact as to whether the decision not to place the prisoner on medication for the first 49 days of

his incarceration was based on the medical judgment of the doctor. The court held that summary judgment was also precluded by genuine issues of material fact as to whether the corporation had a practice or policy that resulted in the prisoner being denied medication for 49 days during his incarceration. The court ruled that the sheriff failed to establish an entitlement to summary judgment, even though the former prisoner presented evidence only as to the private corporation with which the county contracted for correctional health care services because the county remained liable for constitutional deprivations caused by policies or customs of the corporation. (Broward County Jail, Florida, and Armor Correctional Health Services)

U.S. District Court
DISCRIMINATION
EMPLOYEE QUALIFICATIONS

Shepheard v. *City of New York*, 577 F.Supp.2d 669 (S.D.N.Y. 2008). A New York City Department of Correction (DOC) employee, a correction officer, brought a pro se action against the DOC and the City of New York, alleging they discriminated and retaliated against her in violation of the Americans with Disabilities Act (ADA). The district court granted summary judgment for the DOC and the city. The court held that the employee failed to establish a prima facie case of discrimination, as she did not meet the burden of proving she could perform the essential functions of her position as Captain with or without reasonable accommodation. The court found that the employee failed to state a claim for discriminatory termination. The court noted that the tasks of a Captain's position required an individual to be "focused, attentive, alert, and vigilant," all of which were attributes that were either impaired or lacking as the result of her depression and/or medication she was taking in order to treat that condition. The court also noted that her attendance record evinced her inability to report to work, and her inability to perform the essential functions required of a Captain also implicated safety concerns. (New York City Department of Corrections, New York)

U.S. District Court
FOIA-Freedom of Information Act
RECORDS

Sliney v. *Federal Bureau of Prisons*, 577 F.Supp.2d 113 (D.D.C. 2008). An inmate brought an action against the federal Bureau of Prisons (BOP) pursuant to the Freedom of Information Act (FOIA), based on his requests for a tape recording of portions of certain telephone calls. After a tape purportedly containing the inmate's side of recorded conversations was provided, the BOP moved for summary judgment, and the inmate requested that he be provided with the original recordings. The district court denied summary judgment for the BOP. The court held that summary judgment was precluded by a material issue of fact as to whether the tape of the redacted telephone conversations that was provided by the BOP left out or redacted entire portions of the inmate's conversation. (Federal Bureau of Prisons)

U.S. District Court
POLICIES/PROCEDURES

Smith v. *County of Los Angeles*, 535 F.Supp.2d 1033 (C.D.Cal. 2008). The estate of a deceased county jail inmate brought a § 1983 action against a county and officials, claiming violation of the inmate's Fourth, Fifth, Eighth and Fourteenth Amendment rights, arising out of denial of the inmate's request for an asthma inhalator. The district court denied the defendants' motion to dismiss. The court held that the allegation that the county "promulgated, created, maintained, ratified, condoned, and enforced a series of policies, procedures, customs and practices which authorized the arbitrary punishment and infliction of pain, torture, and physical abuse of certain inmates and detainees" was sufficient to state a claim. The court found that the estate stated a claim that officials violated the Eighth Amendment by showing deliberate indifference to his medical condition, through allegations that they ignored the inmate's plea to be furnished with his asthma inhalator. (Los Angeles County Men's Central Jail, California)

U.S. District Court
EMPLOYEE QUALIFICATIONS

Taylor v. *Hampton Roads Regional Jail Authority*, 550 F.Supp.2d 614 (E.D.Va. 2008). An applicant who was rejected for a position as a corrections officer sued an employer, claiming it discriminated against her on the basis of her disability when it did not hire her, and seeking monetary and injunctive relief pursuant to the Americans with Disabilities Act (ADA) of 1990 and the Rehabilitation Act. The district court denied the employer's motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the one-handed applicant was disabled, whether she could perform each essential function of the position, whether the proposed accommodations were unreasonable, whether she would pose a direct threat to herself or her fellow employees, and whether her disability was a motivating factor in the decision not to hire. (Hampton Roads Regional Jail Authority, Virginia)

U.S. District Court
POLICIES/PROCEDURES

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
STAFF DISCIPLINE

Washington v. *District of Columbia*, 538 F.Supp.2d 269 (D.D.C. 2008). Former employees brought a civil rights action against the District of Columbia Department of Corrections (DOC) and its director alleging violation of their due process rights, defamation, and intentional infliction of emotional distress. The district court granted the DOC's motion to dismiss. The court held that the employees had to exhaust their grievance arbitration according to the terms of the collective bargaining agreement (CBA), or through review by the Office of Employee Appeals (OEA) according to the terms of the Comprehensive Merit Protection Act (CMPA), before bringing suit. The court found that the allegedly defamatory statements made by the director of the DOC regarding the culpability of former employees for a jail escape sufficiently related to a "personnel" issue to require administrative exhaustion under the employee grievance provisions of the CMPA. Two employees had been terminated in response to the escape of two prisoners. The court opened its opinion by

stating “This case concerns a prison break, mass personnel terminations, mass personnel reinstatements and the various efforts undertaken by the defendant (the District of Columbia) and the plaintiffs (D.C. Jail security officers) to enlist this court in a tug-of-war over the right of the D.C. Department of Corrections (“DOC”) to subject its employees to a second round of disciplinary review and firings after an administrative appeals board found the preliminary round deficient.” Two days after two inmates escaped, the DOC Director issued written notification to twelve D.C. Jail employees, including the plaintiffs, placing them on paid administrative leave pending further investigation of the escape. At a press briefing the Director announced the summary firings of the plaintiffs for dereliction of duty. (District of Columbia Jail)

2009

U.S. District Court
POLICIES/PROCEDURES

Brickell v. *Clinton County Prison Bd*., 658 F.Supp.2d 621(M.D.Pa. 2009). A former inmate filed a § 1983 action against a county, county prison board, and various county officials to recover for injuries she sustained while working in a jail kitchen. The district court dismissed the case in part, and denied dismissal in part. The court held that the sheriff was not subject to supervisory liability under § 1983 for alleged failure to obtain adequate medical treatment for the inmate after she suffered burns while working in a jail kitchen, where the sheriff did not participate in or have knowledge of any violations of the inmate's rights, did not direct jail employees to commit the violations, and did not acquiesce in the employees' violations. The court found that the inmate's allegation that a county prison board failed to adopt, and the jail's warden and deputy wardens failed to implement, policies regarding treatment of severe burns and general medical treatment was sufficient to state a claim against the board and officials under § 1983 for violation of her Eighth Amendment right to adequate medical care, where the inmate claimed that there was a total absence of policy concerning medical treatment for severe burns or general medical care when prison facilities were inadequate. (Clinton County Prison Board, Clinton County Correctional Facility, Pennsylvania)

U.S. District Court
CONTRACT SERVICES
HARASSMENT
POLICIES/PROCEDURES

Brown v. *Corr. Corp. of Am.*, 603 F.Supp.2d 73 (D.D.C. 2009). A former female correctional officer sued the District of Columbia, a private corrections contractor, and the director of the Department of Corrections (DOC) in his official capacity, asserting claims under Title VII and § 1983 alleging that her supervisor sexually harassed and raped her. The district court dismissed the case in part and denied dismissal in part. The court found that the Title VII claim and the § 1983 claim against the director were redundant of the claims against the District. The court held that the former female correctional officer's allegations were sufficient for a municipal liability claim under § 1983 against the District of Columbia, including allegations that the District adopted a custom of permitting sexual harassment to occur in correctional facilities by failing to take corrective action in response to her numerous sexual harassment complaints against the supervisor. The officer also alleged that the District allowed the supervisor to continue his incessant and relentless harassment and that ultimately the District's inaction led to her sexual assault by her harasser. The officer alleged that the District knew the sexual assault occurred at the correctional facility because sexual harassment was a standard operating procedure at the facility. The officer asserted that she suffered harm due to the District's willful blindness and failure to implement and effectuate appropriate policies to remedy and/or prevent sexual harassment and rape. The court held that the issue of whether the District of Columbia and the private prison contractor were the correctional officer's joint employers, as required for the officer's Title VII claim against District, could not be resolved by a motion to dismiss. According to the court, there was a factual dispute as to whether the District possessed sufficient control over the contractor's employees to be considered a joint employer of officer. (District of Columbia, Corrections Corporation of America Correctional Treatment Facility)

U.S. District Court
APA-Administrative Procedures Act
RECORDS

Brown v. *Federal Bureau of Prisons*, 602 F.Supp.2d 173 (D.D.C. 2009). A federal prisoner filed an action under the Privacy Act alleging that the Federal Bureau of Prisons (BOP) deliberately and willfully did not maintain accurate records and reports about gangs and gang members which caused him to be housed with inmates from whom he should have been kept separate, jeopardizing his safety and resulting in serious physical injury from attacks. The BOP filed a motion to dismiss, and the district court granted the motion. The court found that the Inmate Central Records System maintained by the BOP was exempt from the amendment requirements and civil remedies provisions of the Privacy Act; therefore, the federal prisoner could not sue the BOP for damages under the Privacy Act for information not maintained or incorrectly maintained in the BOP's Inmate Central Records System. According to the court, the Administrative Procedure Act (APA) was not available to the federal prisoner to address alleged inadequate and inaccurate record keeping by BOP, since BOP was not required to maintain accurate records. The court also noted that suit under APA was not available to the prisoner even under a liberal construction of his complaint as a challenge to the decision of the Bureau of Prisons (BOP) of where to house him, since the prisoner's place of imprisonment, and his transfers to other federal facilities, were specifically exempted from challenge under APA. (Federal Bureau of Prisons, District of Columbia)

U.S. District Court
POLICIES/PROCEDURES

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. (North Dakota State Penitentiary)

U.S. District Court
POLICIES/PROCEDURES

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. (City of Willows Police Department, California)

U.S. Appeals Court
APA- Administrative Procedures Act

Cabral v. *U.S. Dept. of Justice*, 587 F.3d 13 (1st Cir. 2009). A nurse practitioner working as a contractor in a county house of correction brought an action against a county sheriff claiming that she was barred from entering the house of correction, in violation of her free speech rights, for informing the Federal Bureau of Investigation (FBI) of alleged prisoner abuse. The county sheriff brought an Administrative Procedure Act (APA) proceeding against the United States Department of Justice, seeking discovery of relevant documents. The district court denied the requested discovery and the sheriff appealed. A jury found in favor of the contractor in the underlying free speech case and the district court denied the defendants' motions for a new trial. The appeals from the two judgments were consolidated. The appeals court affirmed. The court held that the sheriff's request for information concerning a meeting between the nurse and the Federal Bureau of Investigation (FBI) would directly and adversely impact the FBI investigations into prisoner abuse in the house of correction and violate the Privacy Act, so as to warrant denial of such requests. The court found that the award of $250,000 in punitive damages to the nurse was not excessive, where the sheriff's conduct was reprehensible and the award could have been greater. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
HARASSMENT
WORKING CONDITIONS

Cantu v. *Michigan Dept. of Corrections*, 653 F.Supp.2d 726 (E.D.Mich. 2009). An employee, a Michigan Department of Corrections (MDOC) officer who was of Caucasian and Hispanic descent, brought an action against MDOC, a correctional facility, a facility warden, and several other corrections officers, alleging violations of Title VII, Michigan law and § 1983, as well as claims of conspiracy and gross negligence. The defendants moved for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the alleged hostile work environment and disparate treatment of the MDOC employee of Caucasian and Hispanic descent were attributable to his race and national origin; (2) whether the Department promptly investigated complaints of the employee regarding his alleged harassment by African-American co-workers, and as to whether an appropriate action was taken in response to any investigation conducted; and (3) whether the employee experienced an adverse action when he was unable to receive anticipated overtime as the result of administrative leave, which was allegedly precipitated by the employer's actions. The court held that the prison warden was not entitled to qualified immunity from the § 1983 equal protection claim brought against the employee, where the employee's factual allegations in support of his equal protection claims against the warden regarding his treatment subsequent to his assault by an African-American co-worker, the employee's stress leave, and the warden's possible failure to respond to the employee's complaints of continued harassment stated violations of well-established rights at the time of those events. (Ryan Correctional Facility, Michigan)

U.S. Appeals Court
UNION

Civil Service Employees Ass'n, Local 1000, AFSCME v. *N.L.R.B.*, 569 F.3d 88 (2nd Cir. 2009). A union representing correctional officers at a county correctional facility petitioned for review of a National Labor Relations Board (NLRB) decision that upheld an employer's termination of non-union employees for having picketed a health clinic. The appeals court granted the petition and vacated the NLRB decision. The appeals court held that the peaceful picketing of the health clinic by county correctional facility employees, in their individual capacity, for the purpose of collective bargaining but without the requisite notice from a union under the NLRA, did not deprive the employees of their status as employees protected by the NLRA or constitute unprotected conduct, as would have exposed the employees to discharge. The employees sought to organize and represent the employees of a health clinic that was operated by Correctional Medical Services, Inc. (CMS). The union had requested that CMS recognize it as the collective-bargaining representative of all clinic employees except physicians, supervisors and one clerical worker, but CMS rejected the request. (Albany County Correctional Facility, New York)

U.S. District Court
EMPLOYEE DISCIPLINE
FOIA-Freedom Of Information Act
RECORDS

Coleman v. *Lappin*, 607 F.Supp.2d 15 (D.D.C. 2009). An inmate filed a suit requesting information, under the Freedom of Information Act (FOIA), from the Bureau of Prisons (BOP) regarding the investigations of a former prison employee who was terminated, as well as a disciplinary report that she filed against the inmate. The district court granted summary judgment for the BOP in part and denied in part. The court held that facsimile and extension numbers of BOP personnel, staff members' names, titles, Social Security numbers, dates of birth, pay grades, union affiliations, and dates of duty were exempt from disclosure. The court found that one page of information intended for BOP staff use only and records compiled for law enforcement purposes were not exempt from disclosure absent a description of the harms resulting from disclosure. (Federal Bureau of Prisons, Big Sandy USP, Kentuchy)

U.S. Appeals Court
DISCRIMINATION
EMPLOYEE DISCIPLINE
UNEMPLOYMENT

Cox v. *DeSoto County, Miss*., 564 F.3d 745 (5th Cir. 2009). A county employee brought an action against her county employer, alleging that as result of her age, in violation of the Age Discrimination in Employment Act (ADEA), and in retaliation for her refusal to campaign actively for reelection of the county sheriff, in violation of the First Amendment, she was reassigned to the jail and later terminated. The district court granted summary judgment as to the termination claims, and entered judgment, upon jury verdict, in favor of the employer on the First Amendment claim, and in favor of employee on the age discrimination claim in connection with her reassignment. The employee appealed the grant of summary judgment. The appeals court affirmed in part, reversed in part, and remanded. The court held that the decision of the Mississippi Employment Security Commission (MESC), that the employee was not eligible for unemployment compensation benefits because she was discharged for work-related misconduct, did not collaterally prohibit the employee from claiming that she was terminated in retaliation for bringing an ADEA wrongful transfer claim, given the detailed administrative remedy provided by ADEA for such claims. (DeSoto County Sheriff, Mississippi)

U.S. District Court
BUDGET
STAFFING LEVELS

Dewees v. *Haste*, 620 F.Supp.2d 625 (M.D.Pa. 2009). A former deputy warden brought an action against a county, a county prison warden, a county commissioner, and members of the county's prison salary board, alleging that his position was eliminated in retaliation for his exercise of his First Amendment rights. The defendants moved for summary judgment and the district court granted the motion. The court held that the speech activities of the deputy warden, who provided information to the county district attorney regarding the prison's food services contract and reported misappropriation of inmate funds to a county commissioner, were conducted pursuant to his employment with the prison, precluding his First Amendment retaliation claims. The court noted that the employee handbook required the deputy warden to report any corrupt or unethical behavior or violations of rules or law. According to the court, the county prison board's proffered legitimate, non-retaliatory reason for eliminating the deputy warden's position--that the county was seeking to cut employment-related expenses and the position had been deemed expendable--was insufficient to show that the budget cuts were not for cause. The court held that the county commissioner was entitled to legislative immunity on the former deputy warden's First Amendment retaliation claim where the commissioner's actions of recommending and voting for elimination of the deputy warden's position, as part of an effort to reduce the county's budget, was squarely within the sphere of his legislative work. (Dauphin County Prison, Pennsylvania)

U.S. District Court
STAFF CONTRACTS

Edwards v. *Washington*, 661 F.Supp.2d 13 (D.D.C. 2009). A trainee at the District of Columbia Department of Corrections brought a pro se action against the Department's director, alleging due process and equal protection claims arising from personal injuries she sustained during an employment qualification training exercise. The district court dismissed the action. The court held that the trainee waived her right to bring any claims in negligence against the Department by voluntarily signing a liability release form. The court noted that the prospective liability release form was unambiguous and clear in releasing the Department from liability. (District of Columbia Department of Corrections ("DCDC").

U.S. District Court
POLICIES/PROCEDURES

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. Appeals Court
POLICIES/PROCEDURES

Fairley v. *Andrews*, 578 F.3d 518 (7th Cir. 2009). Former guards at a county jail brought a § 1983 action against various jail officials and others, alleging conspiracy to cover up inmate abuse and violation of their First Amendment rights. Following a grant of summary judgment in favor of certain defendants, the district court entered summary judgment in favor of the remaining defendants. The guards appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the guards' reports about alleged inmate abuse at the jail perpetrated by other guards was not protected speech under the First Amendment, and thus, could not be the basis of a First Amendment retaliation claim. The court noted that a county jail policy required guards to report misconduct by their colleagues, and even if an unwritten policy prohibited such reports of misconduct, it did not offend the First Amendment. The court found that the coworkers who allegedly bullied and made threats against the guards in order to deter the guards from testifying in favor of an inmate violated the guards' free speech rights under the First Amendment, and the guards could recover under § 1983 for such a violation. (Cook County Jail, Illinois)

U.S. District Court
APA-Administrative Procedures Act
CONDITIONS
POLICIES/PROCEDURES

Families for Freedom v. *Napolitano*, 628 F.Supp.2d 535 (S.D.N.Y. 2009). Immigrant advocacy organizations and former immigration detainees brought an action under the Administrative Procedure Act (APA) seeking an order to compel the Department of Homeland Security (DHS) to act on their petition seeking promulgation of regulations to govern conditions in immigration detention facilities operated by Immigration and Customs Enforcement (ICE). DHS moved to dismiss. The district court denied the motion, finding that DHS's nearly two-and-one-half year delay in deciding the petition was unreasonable as a matter of law. The court noted that the DHS Office of Inspector General had issued a report detailing significant problems in ICE detention facilities, problems with detainee medical care had been chronicled by the news media, and the petitioners alleged that detainees in DHS custody were dying as result of substandard conditions. (U.S. Department of Homeland Security)

U.S. District Court
FOIA-Freedom Of Information Act

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
CONTRACT SERVICES
RECORDS

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
POLICIES/PROCEDURES
RECORDS

Graves v. *Arpaio*, 633 F.Supp.2d 834 (D.Ariz. 2009). Pretrial detainees in a county jail system brought a class action against a county sheriff and a county board of supervisors, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The amended judgment provided relief regarding the following: population/housing limitations, dayroom access, natural light and windows, artificial lighting, temperature, noise, access to reading materials, access to religious services, mail, telephone privileges, clothes and towels, sanitation, safety, hygiene, toilet facilities, access to law library, medical care, dental care, psychiatric care, intake areas, mechanical restraints, segregation, outdoor recreation, inmate classification, visitation, food, visual observation by detention officers, training and screening of staff members, facilities for the handicapped, disciplinary policy and procedures, inmate grievance policy and procedures, reports and record keeping, security override, and dispute resolution. The detainees moved for attorney's fees and nontaxable costs. The district court held that: (1) the class of detainees was the prevailing party entitled to attorney's fees; (2) the initial lodestar figure of $1,239,491.63 for attorney's fees was reasonable; (3) Kerr factors provided no basis for downward adjustment of the initial lodestar; (4) the attorney's fees award would not be reduced for limited success; (5) the amount requested as reimbursement for attorney's

fees was fully compensable under the Prison Litigation Reform Act (PLRA); (6) PLRA did not require appointment of class counsel for the award of attorney's fees and non-taxable costs; and (7) the class was entitled to interest on the award of attorney' fees from the date of the court's order ruling in favor of the detainees on the motion to terminate. (Maricopa County Sheriff and Maricopa County Board of Supervisors, Arizona)

U.S. District Court
POLICIES/PROCEDURES

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
COMMISSARY
COMMISSION
TELEPHONE COSTS

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. Appeals Court
EMPLOYEE
QUALIFICATIONS
TRAINING

Hennagir v. *Utah Dept. of Corrections*, 587 F.3d 1255 (10th Cir. 2009). An employee who was part of the medical staff for a state department of corrections (DOC), brought an action against her DOC employer, alleging disability discrimination and retaliation in violation of the Americans with Disabilities Act (ADA), in connection with the DOC's refusal to allow the employee to continue in her position without completing the required physical safety training. The district court granted summary judgment in favor of the employer. The employee appealed. The appeals court affirmed. The court held that completion of the required physical safety training was an "essential job function" for the employee, and that allowing the employee to continue with her identical job duties, by eliminating the essential job function of completion of the required physical safety training, was not a "reasonable accommodation." The court held that completion of the required physical safety training was an "essential job function" for the employee within the meaning of the Americans with Disabilities Act (ADA). The court noted that the DOC required all personnel who had contact with inmates to complete the training, the employee had regular contact with inmates as part of her job, and although the employee claimed that she never had to use the safety training techniques during her eight years of employment at the prison, the potential consequences of an inmate attack against any staff were incredibly severe. (Utah Department of Corrections, Central Utah Correctional Facility)

U.S. Appeals Court
POLICIES/PROCEDURES

Hunter v. *Amin*, 583 F.3d 486 (7th Cir. 2009). The sister of a pretrial detainee who committed suicide in a county jail brought an action on her own behalf, and as the personal representative of the estate of her deceased brother, against a jail psychiatrist, county sheriff, and the county, asserting claims under § 1983, as well as claims of medical malpractice. The district court granted summary judgment in favor of the defendants and the sister appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the county jail's policy that prevented the pretrial detainee from speaking to the jail psychiatrist without a jail officer being present did not violate the detainee's constitutional rights, so as to serve as the basis for holding the county liable for the detainee's death under § 1983. According to the court, the pretrial detainee had a constitutional right to adequate mental health treatment, but there was no evidence suggesting that the detainee could not have received adequate mental health treatment in the presence of a corrections officer. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail psychiatrist committed medical malpractice by discontinuing the medication of the detainee who later committed suicide. (St. Clair County Jail, Illinois)

U.S. Appeals Court
POLICIES/PROCEDURES

Jenkins v. *County of Hennepin, Minn.*, 557 F.3d 628 (8th Cir. 2009). An inmate brought a § 1983 action against a county, the supervisor of a jail's nursing staff, and others alleging he received constitutionally inadequate medical care while incarcerated. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed. The court found that the supervisor of the jail's nursing staff did not act with deliberate indifference to the inmate's serious medical condition when she determined that the inmate should be sent for an x-ray in a day or two. The inmate was unable to open his jaw completely, blow his

nose, or chew. According to the court, the decision reflected a medical judgment that the inmate's injury, though possibly serious, was not urgent and nothing indicated that a one-day delay was detrimental to the inmate's recovery. The court held that the inmate failed to establish that any of the jail's official policies reflected deliberate indifference to his serious medical needs, as required to support his § 1983 claim. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
POLICIES/PROCEDURES

Jones v. *Pramstaller*, 678 F.Supp.2d 609 (W.D. Mich. 2009). The personal representative for a prisoner's estate brought a § 1983 action against prison employees and others, alleging that the defendants were deliberately indifferent to the prisoner's known serious medical need in violation of his Eighth Amendment right to be free of cruel and unusual punishment. The representative also brought state law claims for gross negligence and recklessness. Several employees moved for judgment on the pleadings, or, in the alternative, for summary judgment. The district court granted the motions in part and denied in part. The court held that the personal representative stated a claim against a prison physician by alleging that the physician should have realized the likely gravity and urgency of the prisoner's condition when he read a report that the prisoner had lost control of his muscles, could not walk, and had his eyes rolling back in his head involuntarily, but failed to order an immediate examination of the prisoner. The court ordered further discovery to determine whether the director and coordinator failed to put in place policies and procedures requiring that prisoner complaints, symptoms, or diagnoses of a certain type or severity be communicated to officials within a certain time period after the information became available. (Ernest Brooks Correctional Facility, Michigan)

U.S. District Court
RECORDS

Lynn v. *Lappin*, 593 F.Supp.2d 104 (D.D.C. 2009). A federal prisoner brought a pro se action against the Bureau of Prisons director and a prison warden, alleging that the defendants used false and inaccurate records to willfully and intentionally make adverse decisions concerning the prisoner. The district court dismissed the action. The court held that the Privacy Act provided the prisoner's exclusive remedy, and that the prisoner could not maintain a claim under the Act, where the Department of Justice (DOJ) had properly exempted the Bureau of Prisons' inmate central record system entirely from the Act's access and amendment requirements. (Administrative Maximum Facility, Federal Bureau of Prisons, Florence, Colorado)

U.S. District Court
CONTRACT SERVICES
POLICIES/PROCEDURES

Malles v. *Lehigh County*, 639 F.Supp.2d 566 (E.D.Pa. 2009). A prisoner, who allegedly contracted Methicillin Resistant Staphylococcus Aureus (MRSA) while incarcerated at a county prison, brought an action under § 1983 against the county prison and the prison medical provider, alleging that the defendants unconstitutionally failed to provide him timely, adequate medical care and to protect him from getting infected, and that the provider was negligent under state law. The district court granted the defendant’s motion for summary judgment. The court held that neither prison nurses' perfunctory examinations of the prisoner nor their failure to recognize the prisoner's MRSA for five days constituted deliberate indifference to the prisoner's serious medical needs. The court found that the failure of the county prison and/or the company which contracted with the county to provide medical services to inmates at the prison to fully execute their own plans to more aggressively prevent the spread of MRSA did not provide the basis for the prisoner's Eighth Amendment failure-to-protect claim in his § 1983 action. The court noted that the county and/or the company certainly could provide inmates with conditions that exceeded the relatively low bar of the Eighth Amendment, but they were not required to do that simply because they made plans to do so. The court held that the alleged failure of the county prison and the company which contracted with the county to provide medical services to inmates at the prison to quarantine inmates infected with MRSA, to properly clean and maintain shower facilities, to warn inmates about MRSA and educate them about prevention, and generally to take more precautions against the spread of MRSA did not deprive the prisoner who allegedly contracted MRSA at the prison of life's necessities according to contemporary standard of decency, as would constitute cruel and unusual punishment under Eighth Amendment. According to the court, the county prison and company which contracted with the county to provide medical services to inmates were not deliberately indifferent to the risk that the prisoner would contract MRSA in prison, as would violate the Eighth Amendment, where the prison and company engaged in some efforts to stop the spread of MRSA, even if they did not do everything they could or planned to do. (Lehigh County, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. District Court
EMPLOYEE
QUALIFICATION
VOLUNTEERS

McCollum v. *California*, 610 F.Supp.2d 1053 (N.D.Cal. 2009). A volunteer Wiccan chaplain for inmates incarcerated by the California Department of Corrections and Rehabilitation (CDCR) filed suit alleging disparate treatment from volunteers of other faiths and retaliation for his complaints about the CDCR's treatment of Wiccans. The district court granted the defendants’ motion for summary judgment. The court held that equal protection was not denied to the volunteer Wiccan chaplain who alleged he was not being permitted to see inmates at times and in locations when and where other chaplains were permitted, and that being denied access to chapel time for religious instruction and benefits extended to other administrative volunteer chaplains including access to telephone and computer, and being subjected to more rigorous security scrutiny. According to the court, there was no evidence that other voluntary clergy did not encounter the same difficulties or as to inmates that were denied access to his services. The court found that the CDCR did not retaliate against the volunteer Wiccan chaplain for protected speech complaining against the mistreatment of Wiccans by “denigrating” him while addressing a group of Protestant chaplains or by refusing to hire him as community partnership manager at a women's facility and a state prison. The court noted that the claimed denigration, even if true, did not result in the loss of a valuable government benefit, and that the decision not to hire him was based on the superior qualifications of those ultimately hired rather than on his religion. (California Corrections Institution)

U.S. Appeals Court
CONTRACT SERVICES

Medical Development Intern. v. *California Dept. of Corrections and Rehabilitation*, 585 F.3d 1211 (9th Cir. 2009). A medical services provider for two California Department of Corrections and Rehabilitation (CDCR) prisons brought an action in state court against CDCR and the receiver appointed by the United States District Court for the Northern District of California to oversee the delivery of medical care to prisoners incarcerated by the CDCR. The provider sought damages for the receiver's refusal to pay for services it provided under contract with CDCR. After the case was removed to the district court, the court granted the receiver's motion to dismiss. The provider appealed, but the appeal was stayed to allow the provider to seek leave from the Northern District to sue the receiver. Subsequently, the Northern District denied the provider's request, and then denied the provider's motion for clarification. The provider appealed. The appeals court affirmed in part, vacated in part, and remanded to the United States District Court for the Eastern District of California. The appeals court held that the receiver was not immune in his official capacity from the claim of a medical services provider seeking damages for the receiver's refusal to pay for services it provided under contract with CDCR. The court noted that the receiver held "all powers vested by law in the Secretary of the CDCR as they relate[d] to the administration, control, management, operation, and financing of the California prison medical health care system," which necessarily included the power to control CDCR with regard to paying the provider. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
POLICIES/PROCEDURES

Merriweather v. *Zamora*, 569 F.3d 307 (6th Cir. 2009). A former federal prisoner filed a Bivens complaint claiming deprivation of his First, Fifth, and Sixth Amendment rights by prison mailroom employees' routinely opening and reading prisoner's mail outside of his presence, although the mail was marked as "legal mail" or "special mail" pursuant to Bureau of Prison's (BOP) regulations. The district court denied the employees summary judgment on the grounds of qualified immunity. The employees appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) a fact issue precluded summary judgment as to whether two envelopes from the prisoner's attorney were opened outside the presence of the prisoner; (2) an envelope from federal community defenders was properly labeled legal mail; (3) nine envelopes containing the word "attorney/client" were properly labeled legal mail; (4) prison employees' opening of the prisoner's legal mail outside his presence violated his clearly established First and Sixth Amendment rights; (5) prison mailroom supervisors were not protected by qualified immunity; but (6) prison mailroom employees were protected by qualified immunity. According to the court, the former prisoner's allegations that prison mailroom employees opened his legal mail outside his presence despite his repeated complaints to mailroom supervisors were sufficient to find that mailroom supervisors acted unreasonably in response to the prisoner's complaints, precluding the supervisors' protection by qualified immunity from the prisoner's claims. The prisoner alleged that the supervisors' conduct encouraged an atmosphere of disregard for proper mail-handling procedures, where one supervisor stated that the prison did not have to follow case law but only the Bureau of Prisons' (BOP) policy, and that other supervisors knew of the prisoner's complaints but did nothing to correct the admitted errors. (Michigan Federal Detention Center. Federal Bureau of Prisons)

U.S. District Court
FOIA-Freedom Of Information Act
RECORDS
TELEPHONE

Milton v. *U.S. Dept. of Justice*, 596 F.Supp.2d 63 (D.D.C. 2009). A prisoner filed a pro se complaint, under the Freedom of Information Act (FOIA), seeking recordings of telephone conversations that he made from the prison to others. The district court granted summary judgment in favor of the Department of Justice. The court held that the recordings were exempt from disclosure as personnel and medical files and similar files due to the invasion of privacy of third parties to conversations. The court also found that the recordings were exempt from disclosure as records compiled for law enforcement purposes, disclosure of which would invade the privacy of third parties to conversations. The court noted that the prisoner failed to tender signed waivers from the third parties to the conversations, and failed to offer a public interest rationale for overcoming the third parties' privacy interests. (U.S. Department of Justice, Washington, D.C.)

U.S. Appeals Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

Moyle v. *Anderson*, 571 F.3d 814 (8th Cir. 2009). The son of an inmate murdered in a county jail, and the son's trustee, brought a § 1983 action against a county, seeking damages for the murder of the son's father based on the county's booking policy. The district court granted the county's motion for summary judgment and the son appealed. The appeals court affirmed. The court held that the county's booking policy, classifying an incoming inmate as high or low risk after an intake interview, and then housing those incoming inmates designated as high risk in a separate area of the jail, was not itself unconstitutional, so as to establish the county's municipal liability under § 1983 for the murder of an inmate killed by another inmate. The inmate who murdered the plaintiff's father had been transferred from a maximum security state prison and had previously attacked a fellow inmate. The policy vested discretion in the booking officer to determine whether additional information about an inmate's criminal or incarceration history was necessary and whether the inmate posed a risk to others and needed to be placed in a separate unit. According to the court, there was no evidence that the county had

notice of an alleged inadequacy in its booking policy, or that the policy's alleged inadequacy in failing to require officers to seek information about an incoming individual's history for violence prior to classification was so patently obvious that the county should have known that a constitutional violation was inevitable, as required to impose § 1983 liability on county, based on deliberate indifference. (Sherburne County Jail, Minnesota)

U.S. Appeals Court
BUDGET

Plata v. *Schwarzenegger*, 560 F.3d 976 (9th Cir. 2009). In a class action brought on behalf of state prisoners, alleging that state officials were providing inadequate health care in violation of the Eighth Amendment and the Americans with Disabilities Act (ADA), the receiver appointed to oversee the provision of health care at state prisons moved for an order of contempt based on the state's failure to fund the receiver's capital projects. The district court ordered the state to fund the projects and to show cause why it should not be held in contempt. The state appealed, and alternatively filed a petition for a writ of mandamus. The appeals court dismissed the appeal and denied the writ of mandamus. According to the court, the state failed to prove that it would be damaged or prejudiced in a way not correctable on appeal, weighing against granting the state's petition for a writ of mandamus to prevent the district court from holding it in contempt based on its failure to fund the receiver's capital projects. (California Department of Corrections and Rehabilitation)

U.S. District Court
CONDITIONS
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

Schaub v. *County of Olmsted*, 656 F.Supp.2d 990 (D.Minn. 2009). An inmate at a county detention center brought an action against a county, detention center, center director, probation officer, and several unnamed defendants, alleging that he was injured as result of failure to accommodate his medical condition of paraplegia. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether members of county detention center staff were deliberately indifferent to the inmate's serious medical needs arising from paraplegia; (2) whether failure to oversee nursing staff at the detention center was the "moving force" behind the delay in treating the inmate's wounds and pressure sores on his return to the county detention center; (3) whether the county detention center's unwritten policy barring medical care to work-release inmates was the "moving force" behind the inmate's injuries during his first two months in the center; and (4) whether the county detention center's modifications in permitting the inmate to attend to his hygiene at home, or rely on nursing staff to bathe him, were reasonable, and whether the inmate was excluded from appropriate medical care because of his disability. (Olmsted County Adult Detention Center, Minnesota)

U.S. District Court
EMPLOYEE DISCIPLINE
HARASSMENT

Smith-Thompson v. *District of Columbia*, 657 F.Supp.2d 123 (D.D.C. 2009). A female correctional officer stationed at a District of Columbia jail brought an action in District of Columbia court alleging that officials permitted her to be sexually harassed by a fellow officer and retaliated against her in violation of Title VII. The officer alleged that the District was liable for intentional infliction of emotional distress. The court held that the officer sufficiently pleaded a prima facie case of retaliation under Title VII, even though she failed to specify in her complaint the precise dates of her involvement in the protected activity of lodging a complaint with the Office of the Special Inspector, her assistance in the Special Inspector's investigation, and her contact with the Office of Human Rights (DCOHR). According to the court, the officer's allegations suggested that the District of Columbia Department of Corrections placed her on unpaid leave shortly after she engaged in the protected activity. (District of Columbia Jail)

U.S. Appeals Court
HARASSMENT

Sutherland v. *Missouri Dept. of Corrections*, 580 F.3d 748 (8TH Cir. 2009). A state corrections employee sued her employer for sexual harassment and retaliation in violation of Title VII. The district court granted the Department summary judgment and the employee appealed. The appeals court affirmed. The appeals court held that the employee's harassment was not sufficiently severe or pervasive for a hostile work environment claim, and the employee was not subjected to materially adverse retaliatory actions. The court noted that the employee alleged only one incident of a co-worker's offensive touching, but other harassment did not involve the co-worker or physical contact. (Missouri Department of Corrections)

U.S. Appeals Court
EMPLOYEE DISCIPLINE

Wimbley v. *Cashion*, 588 F.3d 959, (8th Cir. 2009). An African-American female correctional officer brought a § 1983 claim against a warden, alleging race and sex discrimination. The district court denied the warden's motion for summary judgment on the grounds of qualified immunity. The warden appealed and the appeals court affirmed. The court held that a White male correctional officer who was not terminated for discharging

pepper spray at an inmate was similarly situated to the African-American female correctional officer who was terminated after she discharged pepper spray, supporting the female officer's prima facie § 1983 race and sex discrimination claims against the warden. The court noted that both officers were involved in similar pepper-spray conduct, but were disciplined differently. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the warden's proffered reason for terminating the female corrections officer, that she did so in violation of department of corrections policy to intimidate inmates, was a pretext for race and sex discrimination. (Arkansas Department of Correction, Delta Regional Unit)

U.S. District Court
POLICIES/PROCEDURES

Zargary v. *The City of New York*, 607 F.Supp.2d 609 (S.D.N.Y. 2009). A prisoner, who wore a headscarf as an Orthodox Jew, brought an action against a city, alleging that the city's practice or custom of removing head coverings from prisoners before taking photographs during admittance to a correctional facility violated her rights under the Free Exercise Clause of the First Amendment. The court entered judgment in favor of the city. The court held that the city correctional facility's practice or custom of removing head coverings from prisoners before taking photographs during their admittance to a facility was rationally related to the legitimate penological interest of being able to identify prisoners accurately to maintain security, and that the practice did not violate the Free Exercise Clause of the First Amendment. The court noted that the prisoner could dramatically change her appearance by removing the headscarf, making it more difficult to identify her, which would pose a security risk. According to the court, the prisoner had other means to express her religious beliefs in prison, the corrections officers attempted to accommodate the prisoner by minimizing the presence of male officers in the room when the photograph was taken, and the alternative of not removing the headscarf could not be said to pose only a de minimis security risk. (Rose M. Singer Correctional Facility, New York)

2010

U.S. District Court
EMPLOYEE DISCIPLINE
EMPLOYEE QUALIFICATIONS
POLICIES/PROCEDURES

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
CONTRACT SERVICES

Armstrong v. *Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010). A class of disabled state prison inmates and parolees moved for an order requiring state prison officials to track and accommodate the needs of disabled parolees housed in county jails, and to provide access to a workable grievance procedure pursuant to the officials' obligations under the Americans with Disabilities Act (ADA), Rehabilitation Act, and prior court orders. The district court granted the motion and the state appealed. The appeals court affirmed in part and vacated in part. The appeals court held that: (1) contractual arrangements between the state and a county for incarceration of state prison inmates and parolees in county jails were subject to ADA; (2) the district court's order was not invalid for violating federalism principles; (3) the state failed to show that the order was not the narrowest, least intrusive relief possible, as required by the Prison Litigation Reform Act (PLRA); but (4) there was insufficient evidence to justify the system-wide injunctive relief in the district court's order. The court noted the state's recent proposal to alter its sentencing practices to place in county jails approximately 14,000 persons who would otherwise be incarcerated in state prisons. The court also noted that the state's contracts with counties were not simply for incarceration, but to provide inmates and parolees in county jails with various positive opportunities, from educational and treatment programs, to opportunities to contest their incarceration, to the fundamentals of life, such as sustenance, and elementary mobility and communication, and the restrictions imposed by incarceration meant that the state was required to provide these opportunities to individuals incarcerated in county jails pursuant to state contracts to the same extent that they were provided to

all state inmates. The district court's order did not require the state to shift parolees to state facilities if county jails exhibited patterns of ADA non-compliance; rather, the order required that, if the state became aware of a class member housed in a county jail who was not being accommodated, the state either ensure that the jail accommodated the class member, or move the class member to a state or county facility which could accommodate his needs. In finding that statewide injunctive relief was not needed, the court held that evidence of ADA violations was composed largely of single incidents that could be isolated, and the district court's order identified no past determinations that showed class members in county jails were not being accommodated. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
WORKING CONDITIONS

Beckford v. *Department of Corrections*, 605 F.3d 951 (11th Cir. 2010). Female employees at a state correctional institution filed a state court action under Title VII alleging that the state Department of corrections failed to remedy a sexually hostile work environment created by male inmates. After removal to federal court, the district court entered judgment in the employees' favor, and the department appealed. The appeals court affirmed. The court held that the department of corrections was not entitled to a blanket exemption from liability under Title VII arising from its failure to remedy a sexually hostile work environment created by male inmates whenever female employees were present, even if its employees did not participate in or encourage the harassment. According to the court, the exhibitionist masturbation and gender-specific verbal harassment by male inmates in the state correctional institution in the presence of female employees was sex-based and highly offensive conduct that could be used to establish a Title VII claim against the department of corrections for failing to remedy a sexually hostile work environment. (Florida Department of Corrections, Martin Correctional Institution)

U.S. District Court
INMATE FUNDS
POLICIES/PROCEDURES

Bradshaw v. *Lappin*, 738 F.Supp.2d 1143 (D.Colo. 2010). Inmates of the Federal Bureau of Prisons (BOP) brought actions against various prison defendants, alleging that the Director of the BOP violated the inmates' rights, under the Inmate Financial Responsibility Program (IFRP), by requiring them to develop a financial plan addressing payment of their restitution obligations. The inmates moved to consolidate, and defendants moved for summary judgment. The district court consolidated the cases. The court held that allegations that prison officials improperly collected the sum of $25 per quarter from each trust account of the two inmates, which in turn was credited against a debt that it was undisputed the inmates actually owed, did not constitute a condition of confinement amounting to a "sufficiently serious" deprivation of minimal civilized measure of life's necessities, thereby precluding the inmates' Eighth Amendment claims. The court held that the officials were entitled to qualified immunity from the inmates' Bivens claims that they were improperly placed on Inmate Financial Responsibility Program (IFRP) "refusal" status, as it was not clear how, or even if, the inmates' constitutional rights would be implicated by being improperly placed on IFRP "refusal" status, and if placement did violate some constitutional right, that right was not so "clearly established" that officials could be expected to know their conduct violated the Constitution. The court noted that participation in IFRP was voluntary and both inmates voluntarily entered into written agreements to participate in the program, thereby expressly authorizing the Bureau of Prisons (BOP) to begin deducting funds from their accounts each quarter. (Federal Bureau of Prisons)

U.S. Appeals Court
DISCRIMINATION
EMPLOYEE QUALIFICATIONS
POLICIES/PROCEDURES

Breiner v. *Nevada Dept. of Corrections*, 610 F.3d 1202 (9th Cir. 2010). Male correctional officers brought suit, challenging an employment policy of the Nevada Department of Corrections (NDOC) of hiring only female correctional lieutenants at a women's prison. The district court granted summary judgment for the Department and the officers appeals. The appeals court reversed and remanded. The court held that a male correctional officer who had previously applied for correctional lieutenant positions, but allegedly was deterred from applying for lieutenant positions at women's prisons by his knowledge that his application would be futile because of the prison's policy of hiring only women for that position, had standing to pursue a Title VII claim. According to the court, denial of single opportunity to a man for promotion to correctional lieutenant at the women's prison was not "de minimis," and could violate Title VII, despite the existence of promotional opportunities for men across the system as a whole. The court found that gender was not a bona fide occupational qualification (BFOQ) that would justify the facially discriminatory policy of hiring only female correctional lieutenants at the women's prison, where there was no factual basis for concluding that all male correctional lieutenants would tolerate sexual abuse by their subordinates, that all men in a correctional lieutenant role would themselves sexually abuse inmates, or that women, by virtue of their gender, could better understand the behavior of female inmates. (Nevada Department of Corrections)

U.S. Appeals Court
POLICIES/PROCEDURES

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 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 DISCRIMINATION	*Cook* v. *Illinois Dept. of Corrections*, 736 F.Supp.2d 1190 (S.D.Ill. 2010). A former employee brought an action against the Illinois Department of Corrections (IDOC), alleging age discrimination in violation of the Age Discrimination in Employment Act (ADEA) and Illinois Human Rights Act (IHRA). The employer filed a motion for summary judgment. The district court denied the motion. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the employee was discriminated against because of her age; (2) whether the employee was performing legitimate business expectations; (3) whether the employee suffered an adverse employment action; (4) whether coworkers were similarly situated; (5) whether the employee was not promoted due to her age; and (5) whether the employee was constructively discharged. (Illinois Department of Corrections, Centralia Correctional Center)
U.S. Appeals Court POLICIES/PROCEDURES	*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. (Oregon County Jail, Missouri)
U.S. Appeals Court POLICIES/PROCEDURES	*Dodds* v. *Richardson*, 614 F.3d 1185 (10th Cir. 2010). An arrestee filed a § 1983 action against a former county sheriff, in his individual capacity, for alleged violation of his Fourteenth Amendment due process rights by depriving the arrestee of his protected liberty interest in posting bail. The district court denied summary judgment for the sheriff as to qualified immunity and the sheriff appealed. The appeals court affirmed. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the arrestee's due process rights were violated by deprivation of his protected liberty interest in posting preset bail during his detention in the county jail. The court also found a genuine issue of material fact as to whether the county sheriff caused the deprivation of the arrestee's due process rights by the sheriff's personal involvement in maintaining policies at the county jail that prohibited the arrestee from posting preset bail during his detention. (Logan County Jail, Oklahoma)
U.S. Appeals Court BUDGET CONDITIONS	*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. Appeals Court CONTRACT SERVICES POLICIES/PROCEDURES	*E.E.O.C*. v. *GEO Group, Inc*., 616 F.3d 265 (3rd Cir. 2010). The Equal Employment Opportunity Commission (EEOC) brought an action on behalf of a group of female Muslim employees against their employer, a private company that was contracted to run a prison, alleging that the employer violated Title VII's prohibitions on religious discrimination when it failed to accommodate the employees by providing them an exemption to the prison's dress policy which precluded them from wearing Muslim head coverings-- called khimars--at work. The district court granted the employer's motion for summary judgment and denied the EEOC's cross-motion for summary judgment. The EEOC appealed. The appeals court affirmed. The court held that the employer's refusal to allow employees to wear khimars at work did not violate Title VII. According to the court, the employer, a private company, was not required under Title VII to provide to female Muslim employees an exemption to the prison's dress policy, as such a religious accommodation would have caused a safety or security risk and resulted in undue hardship to the employer. The court noted that khimars, like hats, could have been used to smuggle contraband into and around the prison, khimars could have been used to conceal the identity of the wearer, creating problems of misidentification, khimars could have been used against prison employees in an attack, and accommodating the employees would have necessarily required additional time and resources of prison officials. (GEO Group, Inc., George W. Hill Correctional Facility, Delaware County, Pennsylvania)
U.S. Appeals Court POLICIES/PROCEDURES	*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
APA- Administrative Procedures Act
COMMISSARY
FOIA-Freedom of Information Act
RECORDS
TELEPHONE COSTS

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
POLICIES/PROCEDURES

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
UNION

Justice v. *Machtinger*, 733 F.Supp.2d 495 (D.Del. 2010). A correctional officer brought a § 1983 action against a human resources director alleging his First Amendment freedom of speech rights were violated by denial of a promotion in retaliation for union activities. The director moved for summary judgment. The district court granted the motion. The court held that the human resources director was entitled to qualified immunity. According to the court, there was no evidence that the human resources director was personally involved in the misplacement of the officer's application, or had a motive other than his position to retaliate against the officer. The officer alleged that the DOC's human resources director violated his First Amendment free speech rights by intentionally misplacing his application for promotion in retaliation for the officer's union activities. In a prior court decision, the court found that the officer's participation in union negotiations was of considerable concern to the community and that his interest in participating in union negotiations outweighed the DOC's interest in the efficiency of its public service operations. (Delaware Department of Correction)

U.S. Appeals Court
HARASSMENT

King v. *McMillan*, 594 F.3d 301 (4th Cir. 2010). A female former deputy sued her employer sheriff in his official capacity, under Title VII, for sexual harassment and in his individual capacity, under state law, for battery. The sheriff left office and the incoming sheriff was substituted in the action. A jury returned verdicts for the deputy on both claims, and the district court entered judgment for the deputy, awarded compensatory and punitive damages, and granted the sheriff's post-trial motion to reduce the compensatory damages award. Both sheriffs appealed. The appeals court affirmed. The court held that substitution was appropriate for the claim under Title VII. The court held that, under Virginia law, the punitive damages award of $100,000 imposed for the sheriff's battery of the female deputy by unwanted touching was not excessive. The court also found that the compensatory damages award of $50,000, which the district court had reduced from $175,000, was not excessive. (City of Roanoke, Virginia)

U.S. District Court
POLICIES/PROCEDURES

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 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. District Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

Montanez v. *Thompson*, 603 F.3d 243 (3rd Cir. 2010). A state prisoner filed a § 1983 action against corrections officials, alleging that he was incarcerated beyond the expiration of his maximum term of imprisonment as the result of officials' deliberate indifference. The district court denied one official's motion for summary judgment based on qualified immunity. The official appealed. The appeals court reversed and remanded. The appeals court held that it had jurisdiction to review the district court's denial of the official's motion for summary judgment, and that the official was entitled to qualified immunity. According to the court, the state prison records specialist was entitled to qualified immunity in the prisoner's § 1983 Eighth Amendment claim, alleging that the records specialist was deliberately indifferent to the prisoner's unlawful incarceration beyond the expiration of his maximum term of imprisonment. The court noted that the records specialist responded quickly to the prisoner's requests for information about his commitment records, she communicated the prisoner's concerns to her supervisor, the sentencing judge, and the state Department of Corrections (DOC) central office, and there was no showing that she ever ignored the prisoner's claims or failed to follow established DOC policy. (Pennsylvania Department of Corrections, State Correctional Institution at Albion)

U.S. Appeals Court
APA- Administrative Procedures Act
POLICIES/PROCEDURES

Mora-Meraz v. *Thomas*, 601 F.3d 933 (9th Cir. 2010). A federal prisoner petitioned for a writ of habeascorpus challenging a decision of the United States Bureau of Prisons (BOP) to deny him eligibility for admission to a Residential Drug Abuse Program (RDAP). The district court denied the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that BOP's promulgation of a rule requiring the federal prisoner to present documented proof of substance use within 12 months of imprisonment to be eligible for admission to RDAP was a valid interpretive rule, and that implementation of the 12-month rule was neither arbitrary nor capricious under the Administrative Procedure Act. The court noted that a reasonable basis existed for the BOP decision to adhere to 12-month rule in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, (DSM-IV), and a reasonable basis existed for the Bureau to apply that rule to require documented use of drugs within 12 months prior to incarceration. (United States Bureau of Prisons, Federal Correctional Institution at Sheridan, Oregon)

U.S. District Court
HARASSMENT

Morales v. *GEO Group, Inc*., 824 F.Supp.2d 836 (S.D.Ind. 2010). A former employee brought a Title VII action against a private correctional facility manager, her former employer, alleging sexual harassment, retaliation, and constructive discharge. The employer moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the sexually charged comments made by the female employee's supervisors and co-workers over a nine-month period were sufficiently severe or pervasive to create a hostile work environment. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the female employee engaged in a protected activity by complaining about sexual harassment and whether she suffered an adverse employment action by being required to attend a meeting with her alleged harassers, and whether a reasonable person would have felt compelled to resign under the circumstances presented to the female employee. She had been assigned to a new unit after complaining about sexual harassment but was never given any training or a password to log on to her computer. (Geo Group, Inc., and Indiana Department of Corrections, New Castle Correctional Facility)

U.S. District Court
POLICIES/PROCEDURES
STAFF DISCIPLINE

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
POLICIES/PROCEDURES

Riley v. *County of Cook*, 682 F.Supp.2d 856 (N.D.Ill. 2010). The special administrator of the estate of a prisoner who committed suicide while incarcerated at a county jail brought a civil rights action under § 1981 and § 1983 against county defendants. Approximately three weeks after he was admitted to the jail the prisoner was found in his cell hanging by his neck from a bed sheet. The defendants moved to dismiss. The district court

granted the motion in part and denied in part. The court held that the county could not have been directly liable, under Illinois law, for failure to establish and implement the policies and procedures raised in the civil rights complaint, where it was within the purview of the sheriff's office, not the county, to implement policies and procedures within the county jail. The court noted that Illinois sheriffs were independently elected officials not subject to the control of the county. The county also could not have been vicariously liable for the acts of the sheriff and his employees under a respondeat superior theory under Illinois law, as the sheriff was an independently-elected official, answering directly to the electorate, and not having a master/servant relationship with the county board. (Cook County Sheriff, Cook County Department of Corrections, Illinois)

U.S. District Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

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. Appeals Court
POLICIES/PROCEDURES

Thomas v. *Bryant*, 614 F.3d 1288 (11th Cir. 2010). Inmates incarcerated at the Florida State Prison (FSP) brought a § 1983 action against various officers and employees of the Florida Department of Corrections (DOC), alleging that the use of chemical agents on inmates with mental illness and other vulnerabilities violated the Eighth Amendment's prohibition on cruel and unusual punishment. The claims against individual correctional officers responsible for administering the agents were settled. After a five-day bench trial on the remaining claims against the DOC Secretary and the FSP warden for declaratory judgment and injunctive relief, the district court entered findings of fact and conclusions of law. The court ended final judgment and a final permanent injunction in the inmates' favor. The Secretary and warden appealed. The appeals court affirmed. The court 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. (Florida State Prison)

U.S. Appeals Court
CONTRACT SERVICES
POLICIES/PROCEDURES
STAFFING LEVELS

Thomas v. *Cook County Sheriff's Dept*., 604 F.3d 293 (7th Cir. 2010). A mother brought a § 1983 and state wrongful death action against a county, sheriff, and various officers and medical technicians at a county jail after her son died from pneumococcal meningitis while being held as a pretrial detainee. The mother asserted a claim of deliberate indifference to medical needs as well as a common-law claim for wrongful death. Following a jury verdict for the mother, the district court, ordered the reduction of the total damage award from $4,450,000 to $4,150,000. The defendants appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the issue of whether county corrections officers were subjectively aware of the pretrial detainee's serious medical condition that culminated in death from pneumococcal meningitis, as required to support the detainee's survivor's § 1983 deliberate indifference action against a county and officers, was for the jury, given the cellmates' and other witnesses' accounts of the detainee's vomiting and exhibiting other signs of serious illness within plain view of officers without any response from them, and given testimony as to the inmates' various complaints to officers regarding his condition. According to the court, issues of whether the county had a custom or practice of failing to timely review jail inmates' medical requests, and a causal link between such failure and the death of the pretrial detainee from pneumococcal meningitis were for the jury. The court noted that the supervisor and individual medical technicians for the contractor that handled medical services for inmates testified to the practice of not retrieving inmate medical requests on a daily basis, and the detainee's fellow inmates testified to having filed numerous medical requests on the detainee's behalf. The court found that a causal link was not shown between the county sheriff's department's alleged policy of

understaffing the county jail and the pretrial detainee's death from pneumococcal meningitis. Although individual deputies employed as corrections officers were shown to have known of and ignored the detainee's medical needs, there was no evidence that such inaction was due to understaffing rather than other causes. (Cook County Jail, Illinois)

U.S. Appeals Court
INMATE FUNDS
PRISONER ACCOUNTS

Torres v. *O'Quinn*, 612 F.3d 237 (4th Cir. 2010). An inmate brought an action against state prison officials, complaining that the officials failed to repair a malfunctioning night-light in his prison cell, resulting in a disturbing strobe effect. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. The inmate appealed and the appeals court affirmed. The inmate then brought a separate action against prison officials, alleging a constitutional violation due to the prison's prohibition of his subscription to commercially available pictures of nude women. The district court dismissed the action for failure to state a claim upon which relief could be granted, the inmate appealed, and the appeals court dismissed the appeal. The inmate then moved for a partial refund of filing fees that had been collected from his prison trust account, challenging the prison's practice of withholding 40 percent of his account to satisfy the filing fee requirement for his two appeals. The appeals court found that PLRA required that no more than 20 percent of an inmate's monthly income be deducted to pay filing fees, irrespective of the total number of cases or appeals the inmate had pending at any one time. The court held that granting the inmate a partial refund of fees was not warranted since the amounts withheld from the inmate's account were actually owed and were properly, if excessively, collected. (Red Onion State Prison, Virginia)

U.S. District Court
BUDGET
POLICIES/PROCEDURES

Willis v. *Commissioner, Indiana Dept. of Correction*, 753 F.Supp.2d 768 (S.D.Ind. 2010). A Jewish inmate brought a class action against a Department of Corrections (DOC), alleging denial of kosher meals in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and his First Amendment free exercise of religion rights. Cross motions for summary judgment were filed. The motions were granted in part and denied in part. The district court held that: (1) the denial of a kosher diet substantially burdened the inmate's religious exercise; (2) the increased costs of providing kosher meals to inmates was not a compelling interest; (3) the DOC did not establish that providing vegan meals to Jewish inmates was the least restrictive means of furthering a compelling government interest; (4) enforcement of a prison policy violated the First Amendment as applied to the Jewish inmate; and (5) the chaplain knowingly applied the policy in violation of the Jewish inmate's First Amendment rights. According to the court, requiring inmates with religious diet cards to eat 75% of their meals using the card or have the card suspended violated the First Amendment as applied to the Jewish inmate who could only eat kosher meals pursuant to his beliefs. The court noted that the inmate used his card for all available meals, which was only two-thirds of mealtimes as the prison did not provide kosher breakfasts, and the inmate had no alternative to the kosher diet once the prison suspended his card. (New Castle Correctional Facility, Indiana)

2011

U.S. Appeals Court
POLICIES/PROCEDURES

Amador v. *Andrews*, 655 F.3d 89 (2nd Cir. 2011). Current and former female inmates filed a class action § 1983 suit against several line officers employed at seven state prisons and various supervisors and other corrections officials, claiming that they were sexually abused and harassed by the line officers and that the supervisory defendants contributed to this abuse and harassment through the maintenance of inadequate policies and practices. The district court dismissed, and the inmates appealed. The appeals court dismissed in part, and vacated and remanded in part. The court held that the female inmates who made internal complaints, investigated by an Inspector General (IG), that sought redress only for the alleged actions of a particular corrections officer and did not seek a change in policies or procedures, failed to exhaust their internal remedies, as required by the Prison Litigation Reform Act (PLRA) to proceed in federal court on § 1983 claims of sexual abuse and harassment. But the court found that the female inmates' claim of a failure to protect was sufficient exhaustion with regard to a § 1983 class action litigation seeking systemic relief from alleged sexual abuse and harassment. (New York Department of Correctional Services)

U.S. Appeals Court
EMPLOYEE
DISCIPLINE
POLICIES/PROCEDURES
UNION

Association for Los Angeles Deputy Sheriffs v. *County of Los Angeles*, 648 F.3d 986 (9th Cir. 2011). Current or former deputy sheriffs who had been charged with felonies, suspended, reinstated after suspension, and th e n discharged, brought § 1983 claims based on Fourteenth Amendment due process violations against the county, its board of supervisors, civil service commissioners, and sheriff. The deputies were joined by their union. The defendants moved to dismiss for failure to state a claim. The district court granted the motion and the former deputies appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that: (1) due process required that the deputies receive post-suspension hearings in addition to the limited procedures they received before their suspensions; (2) all four deputies adequately stated Monell claims against the county; (3) civil service commissioners were entitled to qualified immunity from the claims of the deputies who did not receive post-suspension hearings, although those claims could go forward against the sheriff and county supervisors; and (4) all individual defendants were entitled to qualified immunity from the § 1983 claims of the two deputies who received post-suspension hearings, as their right to a more substantial hearing was not clearly established at the time of the violations. (Los Angeles County, California)

U.S. Appeals Court
EMPLOYEE
DISCIPLINE

Bardzik v. *County of Orange*, 635 F.3d 1138 (9th Cir. 2011). A sheriff's lieutenant brought a § 1983 action against a county, sheriff, and others alleging that the defendants retaliated against him for his support of the sheriff's opponent in an election challenge, in violation of his First Amendment rights. The defendants moved for summary judgment. The district court denied the motion and the sheriff appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the sheriff was entitled to qualified immunity for his allegedly retaliatory demotion of the lieutenant from a policymaking position, but the sheriff was not entitled to qualified immunity for his alleged retaliation against the lieutenant while the lieutenant was not in a

policymaking position. The court noted that when the lieutenant was the Reserve Division Commander, the lieutenant had broad responsibility, influence on programs, frequent contact with elected officials, technical competence, and power to control others, and that the lieutenant impeded the sheriff's agenda. In his subsequent role with the court operations unit, the lieutenant was not a policymaker. The lieutenant alleged that the sheriff retaliated against him by transferring him from the prestigious position of Reserve Division Commander to an undesirable post at Court Operations, and that the sheriff continued punishing him even after he was transferred by denying him a pay raise and taking the unprecedented step of directing that the lieutenant's rating on his annual evaluation be reduced from "exceeds expectations" to "meets expectations." The lieutenant was also denied the opportunity to interview for Chief of Police positions in 2006 and 2007, even though all lieutenants were allowed to interview even if they were considered unqualified. The court noted that two internal investigations were initiated against the lieutenant, which were ultimately dismissed as unfounded. (Orange County Sheriff's Department, California)

U.S. District Court
EMPLOYEE DISCIPLINE

Corbin v. *Gillen*, 839 F.Supp.2d 376 (D.Mass. 2011). A correctional officer employed by a county sheriff's department brought a § 1983 action against the department's superintendent and assistant superintendent, alleging that the defendants violated his right to free speech by disciplining him for disparaging remarks he made to a county selectman. The officer's statements to the county selectman were made during a jail tour, during which the officer derided the current sheriff and criticized the sheriff's department. The defendants moved for summary judgment. The district court allowed the motion. The court held that the officer's statements were made in performance of his official duties, the officer's speech did not penetrate the realm of public concern, and the temporal proximity between the officer's displaying of a bumper sticker on his car and his suspension without pay was insufficient to establish a First Amendment political affiliation claim. (Plymouth County Sheriff's Department, Massachusetts)

U.S. District Court
PRISONER ACCOUNTS

English v. *District of Columbia*, 815 F.Supp.2d 254 (D.D.C. 2011). An involuntarily committed psychiatric patient brought an action against the District of Columbia, the mayor and various other officials, alleging constitutional claims pursuant to § 1983, and various violations of District of Columbia law. The defendants filed a motion to dismiss and the district court granted the motion. The court held that the process received by the patient at a public institution in regards to removal of money from his patient account was sufficient to satisfy Fifth Amendment procedural due process. The court noted that the patient received a pre-deprivation notice reasonably calculated to make him aware that he owed money and that this money would be taken from his account, the patient followed the procedures listed on the notice to challenge the invoice and availed himself of the appeals process, he received a response, and he requested and received an external review. (Saint Elizabeths, District of Columbia Department of Mental Health)

U.S. District Court
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
EMPLOYEE UNION
STAFFING LEVELS

Federal Bureau of Prisons v. *Federal Labor Relations Authority*, 654 F.3d 91 (D.C. Cir. 2011). The Federal Bureau of Prisons (BOP) brought a Petition for Review from a final order of the Federal Labor Relations Authority (FLRA), holding that the BOP had a duty to bargain over its implementation of a "mission critical" standard for staffing at federal correctional institutions. The district court granted the petition, vacated and remanded. The appeals court held that the BOP was not required to bargain with the union before deciding that certain positions designated as non-critical were to be performed by relief officers and only as needed. The court noted that the collective bargaining agreement gave the agency the exclusive, non-negotiable right to assign work, but provided that the agency could bargain with a representative of its employees over procedures it would use when it exercised that authority. (American Federation of Government Employees, Council of Prison Locals No. 33, District of Columbia)

U.S. Appeals Court
WORKING CONDITIONS
STAFFING LEVELS

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
CONTRACT SERVICES

Florer v. *Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916 (9th Cir. 2011). A state prisoner brought an action under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against a Jewish organization that contracted with the prison to provide Jewish religious services to prisoners, a rabbi who was

president of the organization, and an outreach program of the organization. The prisoner alleged that the defendants refused to provide basic religious reading materials, other basic materials, and spiritual leadership. The district court granted summary judgment in favor of the organization and the prisoner appealed. The appeals court affirmed. The court held that the prisoner, whose requests for a Torah, Jewish calendar, and rabbi visit were denied by the private Jewish organization could not establish that such denial was the result of a governmental policy, as required to hold the organization liable for any deprivation of the prisoner's free exercise rights under § 1983 or his rights under the RLUIPA. According to the court, there was no evidence that the organization was enforcing a department of corrections (DOC) or governmental policy, or that the organization's internal policy was adopted by the DOC. The court also held that the prisoner could not establish that the organization helped DOC staff determine whether other prisoners should be classified by the DOC as Jewish, as required to hold the organization liable. The court noted that the private Jewish organization and its rabbi were not "state actors" under the public function analysis, as would allow the defendants to be held liable on the prisoner's claims. (Washington State Penitentiary)

U.S. District Court
CONTRACT SERVICES
RECORDS

Halkett v. *Correctional Medical Services, Inc*., 763 F.Supp.2d 205 (D.Me. 2011). An employee, a prison counselor, brought an action in state court against an employer alleging violations of the Maine Whistleblower Protection Act (MWPA) and the Maine Human Rights Act (MHRA). Following removal to federal court, the employer moved for summary judgment. The district court denied the motion. The court held that the prison counselor had a reasonable belief that his employer, the prison's medical provider, had improperly handled inmate treatment notes in violation of Maine law, and there was sufficient proximity between his complaints to the provider about misfiled and missing mental health care notes and his termination, so as to establish a prima facie case of violation of the Maine Whistleblower Protection Act (MWPA). The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison medical provider's proffered reason for terminating the prison counselor--that he had violated policies regarding telephone contact by prisoners with those on the outside--was a pretext for what the counselor asserted was the actual reason for his termination, the counselor's many complaints to the provider about its lax and, in his view, unlawful procedures concerning inmate treatment records.(Correctional Medical Services, Inc., Downeast Correctional Facility, Maine)

U.S. Appeals Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

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. Appeals Court
EMPLOYEE DISCIPLINE
UNION

Hernandez v. *Cook County Sheriff's Office*, 634 F.3d 906 (7th Cir. 2011). County corrections officers who were investigated in connection with a jailbreak brought an action against the county sheriff's office and its officials, alleging, among other things, that the defendants retaliated against them in violation of their rights to free political association and free speech under the First Amendment. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court reversed and remanded. The court held that: (1) the defendants did not waive their qualified immunity argument as to the officers' First Amendment retaliation claims; (2) the officers' workplace safety complaints were not protected by the First Amendment; but (3) the appeals court would not decide the issue of whether the defendants were entitled to qualified immunity from First Amendment political retaliation claims because the district court had decided the matter was waived and had never reached a conclusion on that issue. The event that precipitated this case was a jailbreak at the Abnormal Behavior Observation (ABO) unit of the Cook County jail. An inmate had overpowered a jail officer after temporarily blinding him by throwing a cleaning solution in his face. The inmate then released seven other inmates from their cells. The inmates shut off the lights and set a diversionary fire, and the first inmate put on the officer's uniform. In the confusion, the disguised inmate

convinced other jail officers to open certain internal doors, after which the inmates beat several officers. Using keys obtained from the subdued officers, six inmates managed to escape from the facility. They were soon recaptured and Sheriff's Office authorities immediately suspected that the inmates had help from within the Sheriff's Office. The plaintiffs in this case included six former officers of the Special Operations Response Team (SORT), and four other officers. The inmate who began the escape process identified three officers as having advance knowledge of the jailbreak and additional officers were then implicated. The inmate asserted that one of the officers had approached him multiple times with a proposition to stage a jailbreak to draw adverse attention to the leading Cook County Sheriff candidate, in advance of a pending election. The officers claimed that in the days following the jailbreak, investigators detained them under guard for up to 24 hours and denied them food, water and sleep. Several claimed that they were discouraged from contacting a union steward or an attorney. All of the plaintiffs were brought up on administrative charges. (Cook County Sheriff's Office, Illinois)

U.S. District Court
POLICIES/PROCEDURES

Hughbanks v. *Dooley*, 788 F.Supp.2d 988 (D.S.D. 2011.) A prisoner brought a § 1983 action alleging that the state Department of Corrections' correspondence policy prohibiting the delivery of bulk-rate mail was unconstitutional. The prisoner moved for preliminary injunctive relief and asked the court to invalidate portions of the policy. The district court denied the motion. The court found that the prisoner's mere allegation that his First Amendment rights were violated by the prison's denial of bulk-rate mail established the threat of irreparable harm, in determining whether to grant the prisoner a preliminary injunction seeking to invalidate the prison's bulk-rate mail policy, but the balance of hardships favored the prison in determining whether to grant the prisoner's request. The court noted that the bulk-rate mail policy was a state policy, and suspension of the policy for all inmates in the state would compromise the safety and security of every institution in the state. The court found that the policy was rationally-related to the prison's penological purpose of maintaining security and order, that prisoners could review catalogs in a prison property office and could pre-pay postage on any catalog to have it mailed first or second class, that the challenged policy was statewide and any accommodation would have a significant effect on state inmates and prison staff, and the policy was not an exaggerated response to security and other concerns. (Mike Durfee State Prison, South Dakota)

U.S. District Court
DISCRIMINATION
HARASSMENT

Hunter v. *County of Albany*, 834 F.Supp.2d 86 (N.D.N.Y. 2011). A former county corrections officer who was a Native American brought an action against the county, asserting claims of unlawful discrimination and harassment in violation of Title VII of the Civil Rights Act of 1964 and New York State Human Rights Law. The county moved for summary judgment. The district court granted the motion. The court held that the officer did not suffer an adverse employment action, as required to establish a prima facie Title VII discrimination claim, as a result of a lone instance of being ordered to perform an irregular task by his supervisor. The court held that a supervisor's reference to the Native American county corrections officer and his co-workers as "cunts," and an inmate escape video portraying the officer and co-workers as "Keystone Cops," did not give rise to an inference of discriminatory intent as required to establish a prima facie Title VII discrimination claim, where the incidents at issue did not single the officer out on the basis of race or nationality, but portrayed the officer and co-workers in same light. The court concluded that the alleged misconduct suffered by the officer was not sufficiently continuous and concerted or severe and pervasive as to alter the officer's employment conditions and to create an abusive working environment, as required to support a Title VII hostile work environment claim. (Albany County, New York)

U.S. District Court
CONTRACT SERVICES
HARASSMENT

Konah v. *District of Columbia*, 815 F.Supp.2d 61 (D.D.C. 2011). A Liberian female formerly employed by a private health care corporation that contracted with the District of Columbia to provide medical treatment to inmates in a particular penitentiary, whose employment was terminated after she reported alleged harassment and assault and battery by inmates, sued the District and a correctional officer, claiming they violated the Fourth and Fifth Amendments, Title VII, the District of Columbia Human Rights Act (DCHRA), and common laws. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the employee adequately pled a claim that a correctional officer's failure to promptly open a "sally port" to allow her to escape inmates in their undergarments who allegedly surrounded her, jeered at her, used sexually explicit language, and grabbed her on the buttocks was an "unreasonable seizure of her person" in violation of the Fourth Amendment. The court found that the employee adequately pled a claim of discrimination on the basis of gender in violation of equal protection against the correctional officer, noting that her allegations that the officer and the District of Columbia "failed to remedy sexually offensive conduct by inmates," which included "gender specific abusive language" and "sexual assaults." The court also held that the employee adequately pled a due process claim against the correctional officer who deliberately refused to open the "sally port" because the officer prevented her exit and deprived her of her liberty. The court found that the correctional officer was not entitled to dismissal, on the basis of qualified immunity, of § 1983 claims brought by the employee where it was clearly established that the Fourth Amendment prohibited the detention of individuals without any cause, that the correctional officer's discrimination on the basis of sex violated the Fifth Amendment, and that the government could not deprive an individual of her liberty by detaining her without due process. (Unity Health Care, Inc., and the District of Columbia, Central Detention Facility)

U.S. Appeals Court
POLICIES/PROCEDURES

Lee v. *City of Columbus, Ohio*, 636 F.3d 245 (6th Cir. 2011). City employees brought a class action against a city, alleging violations of the Rehabilitation Act, as well as constitutional claims pursuant to § 1983. The district court granted summary judgment in favor of the employees and entered a permanent injunction prohibiting the city from enforcing its sick leave procedures. The city appealed. The appeals court reversed and remanded, finding that the city directive comported with the Rehabilitation Act, and the directive did not raise an informational privacy concern. The city directive required all employees who used sick leave for personal illness of more than three days or a family illness of more than two days, as well as those employees who were

on a sick leave verification list, to provide a note to their immediate supervisor from a doctor stating the nature of their illness. The court found that the directive comported with the Rehabilitation Act and did not violate proscriptions pertaining to disability related inquiries, where the directive was a universal sick leave policy for all employees, disabled or not. (City of Columbus, Ohio)

U.S. Appeals Court
BUDGET

Maddox v. *Love*, 655 F.3d 709 (7th Cir. 2011). An inmate filed a pro se § 1983 complaint against a prison chaplain and prison wardens, claiming that they violated his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and asserting related state law claims. The district court dismissed some claims, and subsequently granted summary judgment against the inmate on the remaining claims. The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate's allegations that prison officials singled out African Hebrew Israelite (AHI) services for cancellation, purportedly due to budget cuts, disproportionately allocated the prison's religious budget and resources to other religions, and failed to pursue alternatives to allow the inmates to pursue their faith. According to the court, this sufficiently stated a facially plausible claim under § 1983 for denial of a reasonable opportunity to exercise his religion without adequate penological justification. (Lawrence Correctional Center, Illinois)

U.S. Appeals Court
CONTRACT SERVICES
POLICIES/PROCEDURES

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. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
INMATE FUNDS

Norris v. *Premier Integrity Solutions, Inc*., 641 F.3d 695 (6th Cir. 2011). An inmate brought a § 1983 due process claim against a state department of corrections and prison officials arising out of the prison's disciplinary proceedings. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court affirmed in part and reversed in part. The court held that a hearing officer's reliance entirely on the statements of a corrections officer, in determining whether videotape evidence was relevant in a prison disciplinary proceeding, deprived the inmate of his right to due process. According to the court, the inmate's right to present evidence was completely undermined by the hearing officer's failure to independently determine whether the evidence was relevant. But the court held that the hearing officer's denial of the inmate's request to call an alleged victim of the assault by the inmate as a witness in the disciplinary hearing did not deprive the inmate of his right to due process. The court noted that the hearing officer had asked the witness to testify, but the witness had refused, and the interest in protecting the witness and managing the difficult relationships within the prison setting far outweighed the inmate's right to call the alleged victim as a witness. (State Correctional Institute at Graterford, Pennsylvania)

U.S. Appeals Court
POLICIES/PROCEDURES

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. Appeals Court
FOIA- Freedom of Information Act
RECORDS

Prison Legal News v. *Executive Office for U.S. Attorneys*, 628 F.3d 1243 (10th Cir. 2011). The publisher of a legal journal brought a Freedom of Information Act (FOIA) action against the Executive Office for United States Attorneys (EOUSA), seeking disclosure of a videotape depicting the aftermath of a brutal prison murder and autopsy photographs of the victim. The district court granted partial summary judgment in favor of the EOUSA and the plaintiff appealed. The appeals court affirmed in part and dismissed the appeal in part. The court held that: (1) the FOIA personal privacy exemption for law enforcement records barred disclosure of the portion of the prison videotape depicting the victim's body after the murder and the autopsy photographs; (2) the FOIA personal privacy exemption for law enforcement records barred disclosure of a portion of the audio recording from the prison videotape; and (3) the public domain doctrine did not override the exemption. (United States Penitentiary, Florence, Colorado)

U.S. Appeals Court INMATE FUNDS POLICIES/PROCEDURES	*Reedy* v. *Werholtz*, 660 F.3d 1270 (10th Cir. 2011). A group of state inmates brought an action against the Secretary of the Kansas Department of Corrections, challenging two policies which required money obtained by inmates to be saved for use upon release from prison. The Secretary filed a motion to dismiss or, in the alternative, to grant summary judgment. The district court granted the motion to dismiss and the inmates appealed. The appeals court affirmed. According to the court, compulsory savings accounts for release-eligible prisoners did not violate substantive due process because they were rationally related to a legitimate penological purpose of ensuring that inmates had funds upon release to ease their transition into free society. (Kansas Department of Corrections)
U.S. District Court TRAINING	*Robert* v. *Carter*, 819 F.Supp.2d 832 (S.D.Ind. 2011). A former civil deputy process server brought an action against a sheriff, county, its council, and its board of commissioners, alleging that the defendants failed to grant him a medical exemption from stun gun training or to provide him with a reasonable accommodation, in violation of Americans with Disabilities Act (ADA). The deputy also alleged that the defendants terminated him in violation of his procedural and substantive due process rights. The defendants moved for summary judgment and the district court granted the motion. The court held that stun gun training was essential to the deputy's position and that an exemption from training was unwarranted. According to the court, the defendants had no obligation to consider the deputy's non–back–related ailments in determining a reasonable accommodation, and the deputy had no property interest in continued employment. (Hamilton County Sheriff's Department, Indiana)
U.S. District Court BUDGET POLICIES/PROCEDURES	*Shultz* v. *Allegheny County*, 835 F.Supp.2d 14 (W.D.Pa. 2011). The administratrix of the estate of an inmate who died after developing bacterial pneumonia while pregnant brought a § 1983 action against a county, jail health services, and various officials and employees of county jail, alleging they ignored her serious medical problems. The county and official filed a motion to dismiss. The district court denied the motion. The court held that allegations that the inmate had complained of symptoms involving her breathing and lungs to jail personnel but was told to "stick it out," that she feared impending death and communicated that to officials and her mother, that her condition progressed to the point where she had difficulty breathing and had discharge from her lungs, that she was taken to the infirmary with additional symptoms including nausea and vomiting, which had been present for several days, that she was treated for influenza without taking cultures or other testing, that there was no outbreak of the flu within the jail, that her condition did not improve, that she continued to complain of difficulty breathing and lung discharge, that she was taken to a medical facility intensive care unit, and that tests were performed there but her condition had already progressed to the point where it was fatal were sufficient to plead deliberate indifference to her serious medical need. The court found that allegations that her condition could have been easily controlled and cured with testing were sufficient to plead a cost-cutting/saving custom or policy existed and was the moving force in the inmate's death, as required for the § 1983 action. (Allegheny Correctional Health Services Inc., Allegheny County Jail, Pennsylvania)
U.S. District Court POLICIES/PROCEDURES TRAINING	*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 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. Appeals Court COMMISSARY POLICIES/PROCEDURES	*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. District Court EMPLOYEE QUALIFICATIONS	*U.S.* v. *Massachusetts*, 781 F.Supp.2d 1 (D.Mass. 2011.) The United States of America brought an action against the Commonwealth of Massachusetts, seeking an order enjoining the Commonwealth from administering a physical abilities test in the selection of correctional officers due to its alleged disparate impact on women in violation of Title VII. Both parties moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the Commonwealth's use of the test unintentionally imposed a disparate impact on women, and an issue of material fact existed as to whether the test was job related and consistent with a business necessity. The court noted that in two out of three years in which the test was conducted, the disparity between male and female pass rates well exceeded two-to-three standard deviations, the range considered statistically significant in the context of disparate impact. (Massachusetts Department of Corrections)

U.S. District Court
EMPLOYEE DISCIPLINE
EMPLOYEE QUALIFICATIONS

White v. *Department of Correctional Services*, 814 F.Supp.2d 374 (S.D.N.Y. 2011). A female correction officer brought an action against New York State, the New York State Department of Correctional Services (DOCS), and supervisory officers, alleging violations of Title VII and § 1983. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether reasonable alternatives existed to the prison's gender-based hiring policy under which the officer in charge (OIC) position was posted for male corrections officers only, in light of the fact that the urine testing and strip frisks of male prisoners comprised only a small part of the OIC's job duties and that female officers had worked the OIC position in the past. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the notice of discipline against the female corrections officer, which threatened severe consequences such as dismissal from service and loss of accrued annual leave, as well as a counseling memoranda and negative comment in the officer's performance evaluation, were sufficient to dissuade a reasonable worker from making or supporting a charge of sex discrimination.

According to the court, summary judgment was precluded by genuine issues of material fact as to whether the proffered reason for a notice of discipline and counseling memoranda against the female corrections officer, that she had violated Department of Correctional Services (DOCS) policies by leaving her post and entering an area in which she was not allowed, were a pretext for retaliation for the officer's having filed sex discrimination complaints with a state agency and her union.

The court found that genuine issues of material fact as to whether a supervisory officer and the prison's superintendent were personally involved in the male-only designation of the officer in charge (OIC) position precluded summary judgment on the female corrections officer's § 1983 claim alleging her right to equal protection was violated when these officials discriminated against her because of her gender by denying her the OIC position, on the grounds that the female officer had not established the officials' supervisory liability. (Lincoln Correctional Facility, New York)

U.S. Appeals Court
INMATE FUNDS

Young v. *Wall*, 642 F.3d 49 (1st Cir. 2011). A state prisoner brought a civil rights action against the director of the Rhode Island Department of Corrections (RIDOC), alleging that the director's decision to cease paying interest on funds held in inmates' trust accounts constituted an unconstitutional taking and that the RIDOC's failure to afford the prisoner notice and opportunity to be heard before abandoning the practice of accruing interest violated his right to procedural due process. The district court granted summary judgment for the director and the prisoner appealed. The appeals court affirmed. The court held that the prisoner did not have a constitutionally protected property right, under Rhode Island law, in the interest not yet paid on his inmate trust accounts, and the prisoner did not have a due process right to notice and the opportunity to be heard before the prison abandoned the practice of accruing interest. (Rhode Island Department of Corrections)

2012

U.S. District Court
STAFF DRUG TEST

Allen v. *Schiff*, 908 F.Supp.2d 451 (S.D.N.Y. 2012). A former county corrections officer brought a civil rights action against a county sheriff and a county for constitutional violations allegedly arising out of the administration of a mandatory, random drug test. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact regarding the reasonableness of the drug testing program, which required the county corrections officer--who had not refused or failed a prior drug test-- to provide a urine sample while being directly observed from the front. According to the court, the sheriff had final policymaking authority on the manner in which testing was administered to department employees, such that the county could be liable under § 1983 to the extent that this testing violated the Fourth Amendment. The sheriff had spearheaded the change in the mandatory, random drug testing policy for corrections officers employed by the county sheriff's department, and he directed the entity performing the tests to directly observe the collection of urine samples from corrections officers. (Sullivan County Sheriff's Department and Jail, New York)

U.S. District Court
POLICIES/PROCEDURES

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. Appeals Court
POLICIES/PROCEDURES

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. (Minnesota Sex Offender Program)

U.S. Appeals Court
BUDGET
CONTRACT SERVICESS

Booker-El v. *Superintendent, Indiana State Prison*, 668 F.3d 896 (7th Cir. 2012). A state prisoner filed a civil rights action alleging that prison officials misappropriated proceeds from a prison recreation fund in violation of his due process rights. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that the prisoner suing under § 1983 sufficiently stated that he had suffered an injury in-fact, as required for Article III standing, by prison officials' alleged misappropriation of proceeds from a prison recreation fund in violation of his due process rights. According to the court, the prisoner had a high probability of receiving benefits under a properly administered recreation fund, although the prisoner actually did not have a property interest in that fund, and that the prisoner had a colorable claim to a property interest in that fund and the merits of the case. But the court held that the prisoner did not have any legitimate expectation to any benefit derived from prison's recreation fund, and thus he did not have any protected property interest in the fund, since the governing statute required only that funds be spent for the direct benefit of prisoners if prison officials decided to utilize money from the fund and the fund established from one prison could be transferred to another prison without consulting any prisoner. (Indiana State Prison)

U.S. District Court
CONTRACT SERVICES

Bruner-McMahon v. *Hinshaw*, 846 F.Supp.2d 1177 (D.Kan. 2012). The administrator of the estate and the children of a deceased inmate brought a § 1983 action against a prison medical contractor, its employees, county officials, and prison employees, alleging violations of the Eighth Amendment. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy knew that the inmate faced a risk of a serious medical condition and chose to ignore it. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether a deputy who found the inmate lying on the floor in his cell but did not contact the clinic was deliberately indifferent to the risk of serious medical need. The court found that a deputy who helped escort the inmate back to his cell was not deliberately indifferent to the inmate's serious medical need, as would violate the Eighth Amendment after the inmate died a couple days later, even though the deputy saw the inmate acting strangely and moving slowly, where the deputy believed the inmate had a mental health condition and did not need emergency care from a medical provider, and the deputy believed the deputy in charge at that time would address the matter, and the deputy had no other contact with the inmate. According to the court, a county custom, practice, or policy did not cause alleged constitutional violations by jail deputies in not getting medical care for inmate, as required for supervisory liability for the sheriff in his official capacity. The court noted that policy required that inmates receive necessary medical care without delay, deputies were expected to use common sense when responding to an inmate request or a known need, if an inmate appeared ill or a deputy otherwise recognized the need for medical attention the deputy was supposed to advise the inmate to place his name on sick call, contact a supervisor, or call the medical facility, and, in the event of a medical emergency, the deputy could call an emergency radio code alerting a medical facility to respond immediately. (Sedgwick County Adult Detention Facility, Kansas)

U.S. Appeals Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

Colvin v. *Caruso*, 852 F.Supp.2d 862 (W.D.Mich. 2012). A state prisoner filed a § 1983 action against prison officials, asserting that the prison's 16-day denial of kosher meals, mistakes in administering the kosher-meal program, and lack of Jewish services and literature at the prison violated his constitutional rights and Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction, and subsequently granted summary judgment in favor of the officials, and denied prisoner's motion to amend and second motion for preliminary injunction. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand, the district court held that the prison's "zero tolerance" policy for possession of even one non-kosher food item violated the Free Exercise Clause and

RLUIPA. But the court determined that the officials were entitled to qualified immunity where there had not been any determination that the regulation was in any way deficient at the time of the officials' actions. The court held that the prison's use of questionnaire about the inmate's knowledge of his designated religion was proper. According to the court, the officials' failure to reinstate the inmate to his kosher diet regimen violated the inmate's rights but punitive damages were not warranted. The court awarded $1 in nominal damages where the inmate did not look like he missed many meals as a result of the officials' actions, and there was no evidence of physical injury. The court noted that even though the prison had economic interest in restricting kosher diet to prisoners who had a sincere belief that the diet was necessary to practice their religion, where the inmate had no other means of eating, there was no evidence that providing a modicum of flexibility would have a ripple effect on prison staff or inmates or would escalate the cost of providing kosher meals. (Michigan Department of Corrections, Alger Correctional Facility)

U.S. District Court
EMPLOYEE UNION

Corrections U.S.A. v. *McNany*, 892 F.Supp.2d 626 (M.D.Pa. 2012). A national association of correctional officers brought a diversity action against a state association of correctional officers and the association's officers, alleging interference with an existing contract, interference with a business relationship, and interference with prospective relations. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) there was no evidence that the actions of the state association's executives interfered with the relationship between the national association and its members; (2) the state association president's letter to members regarding the decision to withdraw its organizational membership in the national association did not breach a privilege; (3) there was no evidence that the state association acted with the specific purpose of harming the national association or that the alleged interference and harm were ever carried out intentionally; and (4) no prospective contractual relations existed between the national association and individual correctional officers in Pennsylvania. The court noted that under Pennsylvania law, the president of the state association ofcorrectional officers was acting in his official capacity by sending a letter to the association's members notifying them of the executive board's decision to withdraw its organizational membership in a national association of correctional officers, and thus, the president was not a third party to the contract between the state association and the national association for purposes of the action by the national association for interference with a contract. According to the court, the president's letter constituted the type of work the state association's president was intended to perform, fell substantially and clearly within the authorized time and space limit of the president's employment, and helped actuate, at least in part, the executive board's new policy. (Pennsylvania State Corrections Officers Association, Corrections U.S.A.)

U.S. Appeals Court
HARASSMENT
WORKING CONDITIONS

Crutcher-Sanchez v. *County of Dakota*, 687 F.3d 979 (8th Cir. 2012). A female former county correctional officer filed suit, pursuant to §§ 1983 and 1985, against her employer, a sheriff, a supervisor, and a co-worker who was later promoted to supervisor, claiming that the sheriff and supervisor created or fostered a sexually hostile work environment, and that the supervisor and co-worker conspired to deprive the employee of equal protection. The district court denied the defendants summary judgment on qualified immunity grounds and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the supervisor was not entitled to qualified immunity from the hostile work environment sexual harassment claim; (2) the employee was not the victim of a civil rights conspiracy; and (3) the sheriff did not subject the employee to a sexually hostile work environment. According to the court, the supervisor's harassing conduct started shortly after the employee began working at the jail and included the supervisor looking the employee “up and down” during work, driving to a parking lot of her second job while repeatedly calling her on the telephone, subjecting her to constant sexual attention, and asking her to not tell anyone about their sexual relationship. The court found that the supervisor's unwelcome sexual harassment directed toward the female officer was sufficiently severe or pervasive to alter the conditions of her employment and create a hostile work environment in violation of the Fourteenth Amendment, where the supervisor took advantage of employee when she was intoxicated and vulnerable, the employee felt harassed by the supervisor's leering, the employee was subject to sexual attention by the supervisor during nearly her entire employment with the county, and the employee was fired for ending her sexual relationship with the supervisor. The court held that the supervisor was not entitled to qualified immunity from the female correctional officer's § 1983 claim since it was clearly established at the time of the harassment that the supervisor's attempt to have sex with a subordinate violated the subordinate's civil rights. According to the court, the sheriff's offer of a box of chocolates to the female correctional officer, and asking her out several times, was not sufficiently severe or pervasive conduct to create a sexually hostile work environment, as required to support the officer's § 1983 claim for sexual harassment in violation of Fourteenth Amendment equal protection, since the sheriff's inappropriate acts were not so intimidating, offensive, or hostile as to poison the work environment. (Dakota County Jail, Nebraska)

U.S. District Court
HARASSMENT
WORKING CONDITIONS

Davis v. *Vermont, Dept. of Corrections*, 868 F.Supp.2d 313 (D.Vt. 2012). A former employee of the Vermont Department of Corrections (DOC), who worked as a prison guard, brought an action against his former employer, alleging, among other things, that he was retaliated against in violation of the Americans with Disabilities Act (ADA) and that he was sexually harassed on the basis of his sex in violation of Title VII and the Vermont Fair Employment Practices Act (VFEPA). The employer moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that: (1) as a matter of first impression, the employer was immune from the employee's ADA retaliation claim; (2) the employee stated a Title VII hostile work environment claim based on harassing conduct that suggested the employee failed to conform to gender stereotypes; (3) the employee sufficiently stated that he was disabled under the Rehabilitation Act; (4) the employer failed to show that any perceived impairment of the employee was both transitory and minor, as a defense to the Rehabilitation Act claim; (5) the alleged incidents were sufficiently severe to alter the conditions of the employee's employment, as supported by the hostile work environment claims; (6) the alleged harassment by co-workers and inmates could be imputed to the employee's supervisors

for purposes of holding the employer vicariously liable; and (7) there was a causal connection between the employee's protected activity and the adverse employment actions, as supported a prima facie case of retaliation. The court found that although images sent to the male DOC employee in e-mails by his supervisors and co-workers referring to genitalia may have been tinged with offensive sexual connotations, the images did not constitute discrimination because of sex, as would support the employee's Title VII sexual harassment claim, where no inference could be drawn that the conduct was due to general hostility to the presence of males in the workplace or that it was due to the disparate treatment of members of the opposite sex.

According to the court, allegations in the employee's second amended complaint that a supervisor sent him an e-mail stating "way to milk it, buddy," referring to the time the employee took off due to a work-related testicular injury, and that a male inmate stated, "good luck making kids with that package," sufficiently stated a Title VII hostile work environment claim based on harassing conduct that suggested the employee failed to conform to gender stereotypes. The court held that the alleged incidents in which supervisors of the employee, a prison guard who sustained a work-related testicular injury, sent the employee two e-mails on consecutive days containing explicit references to his genital pain, the e-mails were circulated to other staff, and were hung in a mail room where employees, both male and female, could see them, the employee received a threatening note in his mailbox after he returned from hernia surgery that stated "how's your nuts/kill yourself/your done," and the employee was copied on an e-mail containing a cartoon drawing of someone with gun to his head with the caption "Kill Yourself," were sufficiently severe to alter the conditions of the employee's employment, as supported his hostile work environment claims based on disability discrimination under the Rehabilitation Act and the Vermont Fair Employment Practices Act (VFEPA). (Vermont Department of Corrections)

U.S. District Court
POLICIES/PROCEDURES

De Luna v. *Hidalgo County, Tex*., 853 F.Supp.2d 623(S.D.Tex. 2012). Two students, on behalf of themselves and a purported class, brought a § 1983 action against state magistrates and a county, alleging violation of federal due process and equal protection rights based on their placement in jail for unpaid fines or costs related to violations of the Texas Education Code. The parties filed cross-motions for summary judgment and the students also moved for class certification. The district court held that: (1) the students lacked standing to seek equitable and declaratory relief from magistrates' practice of incarcerating individuals without an indigency determination; (2) the county's policy of jailing individuals charged with fine-only misdemeanor offenses who had failed to directly inform the arraigning magistrate of their indigency violated due process; and (3) the students did not waive their right to an affirmative indigency determination by waiving their right to counsel at arraignment. The court held that summary judgment was precluded on the § 1983 claim by a genuine issue of material fact existed as to whether one of the students placed in jail for unpaid fines or costs related to violations of Texas Education Code knew that she could tell a state magistrate that she could not pay the fines on her outstanding charges and obtain either a payment plan or community service. (Hidalgo County Jail, Texas)

U.S. District Court
EMPLOYEE QUALIFICATIONS

Donahoe v. *Arpaio*, 869 F.Supp.2d 1020 (D.Ariz. 2012). In consolidated cases, members of a county board of supervisors, county staff, and judges of county courts, brought actions against members of county sheriff's office and county attorney's office, alleging various torts and constitutional violations. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that members of the county sheriff's office and county attorney's office were not entitled to absolute immunity in their filing of a federal Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuit against members of county board of supervisors, county staff, and judges of county's courts, where the RICO suit was far removed from the judicial phase of the criminal process, and there was no basis for governmental enforcement under RICO itself. According fo the court, the county sheriff's and county attorney's voluntary dismissal of their RICO suit constituted termination in favor of the members of the county board of supervisors, county staff, and judges of county's courts, as required to support Arizona law claims against the sheriff and attorney for wrongful institution of civil proceedings.

The court held that an abuse of process claim was stated against the sheriff and attorney when a judge in the county's criminal court alleged that county sheriff and county attorney hired a process server to serve the judge with the federal RICO suit, when the sheriff and the attorney knew or should have known that the server previously had been prosecuted for threatening to kill the judge. The court held that neither the county sheriff nor the deputy county attorney were entitled to qualified immunity at the motion to dismiss stage of the § 1983 action, where the plaintiffs' claims overlapped to some extent, there was asymmetry of the information between plaintiffs and the defendants regarding which defendants actually took, ordered, supervised, or approved certain actions, and the defendants would not be prejudiced by allowing these claims to proceed because they would already be subject to discovery in the plaintiffs' suit. According to the court, numerous constitutional violations allegedly undertaken by the county attorney, the county sheriff, and their subordinates, were sufficiently egregious and voluminous to raise a fair inference of failure to train in relation to the § 1983 claims asserted by the plaintiffs. (Maricopa County Sheriff's Office and County Attorney's Office, Phoenix, Arizona)

U.S. Appeals Court
WORKING CONDITIONS

Duncan v. *County of Dakota, Neb*., 687 F.3d 955 (8th Cir. 2012). A female former county employee brought a § 1983 action against a county, a supervisor, and others, alleging hostile-work-environment, sexual harassment, and constructive discharge in violation of the Equal Protection Clause of the Fourteenth Amendment. The district court denied the supervisor's motion for summary judgment, and he appealed. The appeals court reversed and remanded, finding that the supervisor's alleged conduct was not so objectively severe, extreme, or intimidating as to alter the term, condition, or privilege of the employee's employment. The supervisor allegedly engaged in sexual favoritism and traded preferential treatment for sexual favors. According to the court, the supervisor's alleged conduct had not been physically threatening or humiliating to the officer, the supervisor had not denied the officer any benefits or opportunities, and any promotion for which the officer had been available had not gone to any employee who had had a sexual relationship with the supervisor. (Dakota County Jail, Nebraska)

U.S. District Court
POLICIES/PROCEDURES

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. (Fayette County Prison, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. District Court
EMPLOYEE QUALIFICATIONS
POLICIES/PROCEDURES

Finnie v. *Lee County, Miss*., 907 F.Supp.2d 750 (N.D.Miss. 2012). A female Pentecostal juvenile detention officer brought an action against a county and a sheriff, alleging that her termination violated her First Amendment rights of free speech and free exercise of religion and that it was religious and gender discrimination and retaliation under Title VII. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the county's pants-only uniform policy did not violate the Free Exercise Clause; (2) the officer was not replaced by someone outside her protected class as a female; (3) the uniform policy was not sex discrimination or sex stereotyping; (4) requiring the county to offer the officer an exemption to the uniform policy would subject the county to undue hardship; and, (5) the officer did not show that the county's proffered reason for her termination was a pretext for discrimination. According to the court, requiring the county employer to offer the Pentecostal female juvenile detention officer an exemption to its "no skirts" policy as a religious accommodation would subject the county to undue hardship, and thus, policy was not religious discrimination under Title VII. The court noted that there were legitimate safety concerns presented from female officers wearing skirts, including impairment of an officer's ability to perform defense-tactic maneuvers because of the likelihood that an assailant could pin the material of the skirt to the floor with his knees, preventing the officer from moving her body to perform maneuvers, and the female officer, who lacked a GED certificate at the time she worked for the county, was not qualified for vacant positions which would allow her to wear skirt. But the court found that summary judgment was precluded by an issue of material fact as to whether the county's proffered reason for terminating the officer was a pretext for retaliation, where less than one month passed between the filing of a charge and the officer's termination. (Lee County Juvenile Detention Center, Mississippi)

U.S. District Court
POLICIES/PROCEDURES

Gabriel v. *County of Herkimer*. 889 F.Supp.2d 374 (N.D.N.Y. 2012). The administrator of a pretrial detainee's estate brought a § 1983 action against a county, jail officials, and jail medical personnel, alleging deliberate indifference to a serious medical need, due process violations, and a state claim for wrongful death. The county brought a third-party complaint against a hospital demanding indemnity. The defendants moved for summary judgment and the hospital moved to dismiss the third-party complaint. The district court held that severance of the third party complaint involving the hospital was warranted, where a separate trial regarding indemnity, following a verdict on liability, would be both economical and convenient. The court found that summary judgment was precluded by material fact issues as to: (1) whether a nurse practitioner was aware of the detainee's history of depression, anxiety, tachycardia, angina, mitral valve prolapsed, degenerative back disease, and sciatic nerve, but consciously disregarded the risk of harm to him; (2) whether the detainee had a serious medical condition; and (3) whether a policy or custom of the county led to the denial of medical treatment for the detainee. According to the court, there was no evidence that a corrections officer disregarded an excessive risk to the safety of the pretrial detainee, noting that when the officer witnessed the detainee fall, he assisted him and promptly contacted the medical unit. According to the court, a lieutenant was not a policymaker, as required to support a § 1983 claim by the estate, where the lieutenant was responsible for jail security and had no involvement in the jail's medical policies and procedures. (Herkimer Co. Jail, New York)

U.S. Appeals Court
DISCRIMINATION

Harris v. *Warrick County Sheriff's Dept*., 666 F.3d 444 (7th Cir. 2012). An African American former deputy sheriff sued a sheriff's department under a federal civil right statutes, alleging that he was terminated from his probationary employment due to his race. The district court granted summary judgment for the department and the former deputy appealed. The appeals court affirmed. The appeals court held that: (1) coworkers' use of racially tinged nicknames and workplace exposure to excerpts from a movie apparently perceived as treating racism as acceptable did not establish that the former deputy was terminated due to his race, and (2) the department's different treatment of white deputy sheriffs who had performance problems during their probationary employment did not establish that former deputy was terminated due to his race. (Warrick County Sheriff, Indiana)

U.S. District Court
POLICIES/PROCEDURES

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. 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
POLICIES/PROCEDURES

Heyerman v. *County of Calhoun*, 680 F.3d 642 (6th Cir. 2012). A pretrial detainee, who was imprisoned for more than 17 years after a state appellate court reversed his criminal conviction and remanded the matter to the trial court, brought a § 1983 action against a county and the county's prosecuting attorney. The district court granted the defendants' motion for summary judgment. The detainee appealed. The appeals court affirmed. The court held that there was no evidence that the county's prosecuting attorney was directly responsible for any conduct that led to any violation of the speedy-trial rights of the pretrial detainee, as required to hold the prosecuting attorney individually liable under § 1983. The court also found that the detainee failed to demonstrate a defective policy or practice to hold the county or the county's prosecuting attorney in her official capacity liable for the alleged violation of his speedy-trial rights under § 1983. (Calhoun County, Michigan)

U.S. District Court
POLICIES/PROCEDURES

In re Ohio Execution Protocol Litigation, 906 F.Supp.2d 759 (S.D.Ohio 2012). Following consolidation of several § 1983 actions brought by state death row inmates to challenge the constitutionality of various facets of a state's execution protocol, one inmate moved for a stay of execution, a temporary restraining order (TRO), and a preliminary injunction. The district court denied the motion, finding that the inmate was not likely to succeed on the merits of his equal protection claim. The inmate alleged that the state's execution policy, including its allegedly discretionary approach to written execution protocol and informal policies, violated his right to equal protection by codifying the disparate treatment of similarly situated individuals without sufficient justification, entitling him to a stay of execution. (Ohio Department of Rehabilitation and Correction)

U.S. District Court
CONTRACT SERVICES

Jones v. *Correctional Medical Services, Inc*., 845 F.Supp.2d 824 (W.D.Mich. 2012). The personal representative of the estate of an inmate, who died of viral meningoencephalitis while under the control of the Michigan Department of Corrections (MDOC), brought an action against prison officials and personnel, as well as the company which contracted to provide medical services to the inmate and the company's employees, alleging that the defendants violated the inmate's Eighth Amendment right to adequate medical care. The representative also asserted state law claims for gross negligence and intentional infliction of emotional distress. The court held that the company that provided medical services to inmates under a contract with the Michigan Department of Corrections (MDOC) could not be held liable under § 1983 on a supervisory liability theory in the action brought by the personal representative, but the company was subject to suit under § 1983. The court found that the personal representative failed to establish that policies or customs of the company which provided medical services to inmates under contract with the MDOC were involved in the inmate's treatment, as required to sustain a § 1983 Eighth Amendment claim against the company based on the inmate's alleged inadequate medical treatment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the doctor employed by company was aware of the serious medical needs of the inmate, as to whether the doctor's treatment of the inmate displayed deliberate indifference, and as to whether the doctor's inaction or delay proximately caused the inmate's death. (Ernest Brooks Facility, Michigan, and Correctional Medical Services)

U.S. District Court
BUDGET

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. Appeals Court
POLICIES/PROCEDURES

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
VOLUNTEERS

Moorehead v. *Keller*, 845 F.Supp.2d 689 (W.D.N.C. 2012). A state inmate, a Messianic Jew, brought a pro se § 1983 action against North Carolina Department of Corrections (DOC) officials, alleging that the officials prevented him from writing to his "spiritual advisor" and discontinued Messianic Jewish services at the prison, in violation of his constitutional rights. The defendants moved for judgment on the pleadings. The district court granted the motion. The court held that the state prison regulation prohibiting prison volunteers from corresponding with inmates was reasonably related to the prison's legitimate penological interest in preventing volunteers from becoming unduly familiar with inmates, and thus the actions of North Carolina Department of Corrections (DOC) officials in preventing the Messianic Jewish inmate from corresponding with his "spiritual advisor," who was a volunteer at the prison, pursuant to regulation did not violate the inmate's constitutional rights. (Mountain View Correctional Institution, North Carolina)

U.S. Appeals Court
INMATE FUNDS
POLICIES/PROCEDURES

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. (Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. District Court
EMPLOYEE UNION

New York State Correctional Officers & Police Benev. Ass'n, Inc. v. *New York*, 911 F.Supp.2d 111 (N.D.N.Y. 2012). A state employees union representing correctional officers and police officers, and its president, on behalf of themselves and all others similarly situated, brought an action against the State of New York and various public officials, alleging that defendants unilaterally increased the percentage of contributions that plaintiffs were required to pay for health insurance benefits in retirement, and, thereby, violated the Contracts Clause and Due Process Clause, impaired the plaintiffs' contractual rights under the terms of their collective bargaining agreement (CBA), and violated state law. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the request of state employees union and its president, for an order declaring unconstitutional the law increasing the percentage of contributions that plaintiffs were required to pay for health insurance benefits in retirement, was prospective, and therefore not barred by the Eleventh Amendment.

According to the court, the union and its president sufficiently brought a state law contractual impairment claim against state officials, by alleging that the state officials' implementation of reduced contribution rates to plaintiffs' health insurance benefits in retirement was not authorized by state law. The court held that the union and its president sufficiently alleged in its § 1983 action that state officials' implementation of reduced contribution rates to plaintiffs' health insurance benefits in retirement was beyond the scope of the officials' authority as public officials, as required to defeat the state officials' motion to dismiss based on legislative immunity. The court also found that the union and its president pled sufficient facts suggesting that the state defendants' actions violated the parties' collective bargaining agreement (CBA), past state practices, and representations made by the state, and were not reasonable and necessary to meet a stated legitimate public purpose, as required to state a Contracts Clause claim against state defendants. (New York State Correctional Officers & Police Benevolent Assoc., Inc.)

U.S. Appeals Court
POLICIES/PROCEDURES

Norfleet v. *Walker*, 684 F.3d 688 (7th Cir. 2012). An Illinois state prisoner, who was wheelchair-bound due to a "nerve condition," brought an action against several prison employees, alleging that refusing to allow him to engage in physical outdoor recreational activity violated the Americans with Disabilities Act (ADA). The prisoner was housed in segregation, therefore confined to his one-person cell 23 hours a day. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded. The appeals court found that an alleged prison "quorum rule" that will not allow a disabled inmate to engage in outdoor recreation unless at least nine other disabled inmates want to do so as well, seemed arbitrary. The court noted that recreation, including aerobic exercises that cannot be performed in a cell, is particularly important to the health of a person confined to a wheelchair. According to the court, whether seven weeks without such recreation can

result in serious harm to someone in the plaintiff's condition is a separate question not yet addressed in the litigation. (Pinckneyville Correctional Center, Illinois)

U.S. Appeals Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

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
BUDGET
EMPLOYEE UNION

Roberts v. *New York*, 911 F.Supp.2d 149 (N.D.N.Y. 2012). Retired state employees brought an action against the state of New York, state departments, and state officials, alleging that the defendants unilaterally increased the percentage of contributions that retired employees were required to pay for health insurance benefits in retirement and violated the Contracts Clause and Due Process Clause of the United States Constitution, impaired the retired employees' contractual rights under terms of their collective bargaining agreement (CBA), and violated state law. The retirees sought injunctive relief, declaratory judgments and monetary damages. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that: (1) claims against the state of New York and state departments were barred by the Eleventh Amendment; (2) the allegations stated a claim against state officials for violation of the Contracts Clause; and (3) the allegations stated a Fourteenth Amendment due process claim against state officials. According to the court, the retired state employees' allegations that state officials did not issue a declaration or any other kind of finding stating that it was necessary to raise the contribution rates, that raising the contribution rate was not part of a state budget, that the only "rationale" or "purpose" asserted by the officials was that it was necessary to implement negotiated agreement between the State and the bargaining unit, that a substantial impairment on the retirees' rights defeated the significant public purpose, and that the unilateral implementation of the reduced contribution rates violated the collective bargaining agreement (CBA) and was an abuse of power, were sufficient to suggest that the officials' actions were not reasonable and necessary, as required to sustain their claim against state officials for violation of the Contract Clause. (Council 37, American Federation of State, County and Municipal Employees, New York)

U.S. Appeals Court
POLICIES/PROCEDURES

Schepers v. *Commissioner, Indiana Dept. of Correction*, 691 F.3d 909 (7th Cir. 2012). Persons required to register on Indiana's sex and violent offender registry brought a putative class action against the Indiana Department of Correction (DOC) pursuant to § 1983, alleging that failure to provide a procedure to correct errors violated Fourteenth Amendment due process. The district court granted summary judgment for the DOC and the registrants appealed. The appeals court reversed and remanded. The appeals court held that the DOC had sufficient responsibility under state law and in practice over registry to be compelled to provide potential relief. The court noted that the DOC, under state law, was ultimately responsible for the creation, publication, and maintenance of the registry, the DOC contracted with a sheriff's association to publish the registry, and the DOC decided what information was to be displayed. The court found that policies for review of information on the registry were inadequate, noting that there was no process whatsoever for registrants who were not incarcerated, that not all registrants were first incarcerated, and there was no guarantee mistakes would not be made later after a registrant was released from incarceration. (Indiana Sex and Violent Offender Registry, Indiana Department of Correction)

U.S. District Court
STAFF CONTRACTS

Segura v. *Colombe*, 895 F.Supp.2d 1141 (D.N.M. 2012). An arrestee brought an action against a board of county commissioners, alleging claims pursuant to § 1983 and the New Mexico Tort Claims Act (NMTCA) following his arrest by a tribal police officer who was appointed and commissioned as a county deputy sheriff. The board moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the tribal police officer, who was appointed and commissioned as a county deputy sheriff, was not a salaried public employee of a governmental entity, as required to be a law enforcement officer under the New Mexico Tort Claims Act (NMTCA). Therefore, the court found that the officer's conduct could not be attributable to the board of county commissioners. The court noted that the commissioners did not have immediate supervisory responsibilities over the officer, and the officer was not subject to sheriff's department rules. (Santa Fe Board of County Comm'rs, New Mexico, and Santa Fe County Adult Detention Facility)

U.S. District Court
POLICIES/PROCEDURES

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
POLICIES/PROCEDURES

Soneeya v. *Spencer*, 851 F.Supp.2d 228 (D.Mass. 2012). A state prisoner, a male-to-female transsexual, brought an action against the Commissioner of the Massachusetts Department of Correction (DOC), alleging violations of her Eighth Amendment rights. Following a bench trial, the district court held that the prisoner's gender identity disorder (GID) was a serious medical need and the treatment received by the prisoner was not adequate. The court found that the Commissioner was deliberately indifferent to the prisoner's serious medical need and the DOC's pattern of obstruction and delay was likely to continue, as required for the prisoner to obtain injunctive relief on her Eighth Amendment claim, where the DOC's policy for treating GID imposed a blanket prohibition on cosmetic and sex reassignment surgery without exception. The court noted that the transsexual prisoner's gender identity disorder was a "serious medical need" within the meaning of the Eighth Amendment, the prisoner's GID was diagnosed by a physician as needing treatment, and she had a history of suicide attempts and self castration while in custody. The court found that the treatment received by the transsexual prisoner was not adequate, although the DOC provided the prisoner with psychotherapy and hormone treatment, it failed to perform an individual medical evaluation aimed solely at determining appropriate treatment for her GID as a result of its blanket prohibition on cosmetic and sex reassignment surgery. (MCI–Shirley, Massachusetts)

U.S. District Court
POLICIES/PROCEDURES

Starr v. *Moore*, 849 F.Supp.2d 205 (D.N.H. 2012). A state prisoner brought an action against a prison employee and others, alleging First Amendment retaliation and violation of his Eighth Amendment rights, in connection with employee's alleged conduct of telling other inmates that they were no longer receiving special meals on holidays as a result of a prior lawsuit filed by prisoner. The prisoner moved to exclude evidence of his prior lawsuits and grievances. The district court held that evidence of the prisoner's subsequent grievances and lawsuits against prison employees was relevant and that alleged prior statements by the employee, blaming the prisoner for a prison policy of no longer providing special meals to prisoners on holidays, were admissible as prior bad acts. (Northern New Hampshire Correctional Facility)

U.S. Appeals Court
BUDGET
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. (Missouri Sexual Offender Treatment Center)

U.S. District Court
POLICIES/PROCEDURES

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. District Court
DISCRIMINATION
POLICIES/PROCEDURES

Washington v. *California City Correction Center*, 871 F.Supp.2d 1010 (E.D.Cal. 2012). A discharged African-American employee, who worked as corrections officer, brought an action against her former employer alleging, among other things, that she was discriminated against on basis of her race in violation of California Fair Employment and Housing Act (FEHA), and wrongfully terminated in violation of public policy. The employer moved for summary judgment. The district court granted the motion in part and denied in part. The court found genuine issues of material fact as to whether the discharged African-American corrections officer exhausted her administrative remedies with respect to her claim that her employer failed to prevent racial discrimination, and as to whether actionable discrimination occurred, precluding summary judgment as to the employee's failure to prevent discrimination cause of action under the California Fair Employment and Housing Act (FEHA). The court held that the African-American corrections officer's allegations in her administrative complaint that her employer subjected her to a wrongful investigation of inappropriate behavior because of her race, and that the employer retaliated against her by wrongfully investigating her behavior after she complained to the employer about her supervisor's racially motivated discrimination, were sufficient to encompass claims of retaliation under the California Fair Employment and Housing Act (FEHA), for administrative exhaustion purposes. (California City Correction Center, Contrator CCA of Tennessee)

U.S. District Court
POLICIES/PROCEDURES

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. Appeals Court
HARASSMENT
WORKING CONDITIONS

Williams v. *Herron*, 687 F.3d 971 (8th Cir. 2012). A female correctional officer brought a § 1983 action against a county and a former chief deputy sheriff, who were her employers, alleging gender discrimination in violation of her Fourteenth Amendment rights. The district court entered an order denying the sheriff's motion for summary judgment and the sheriff appealed. The appeals court affirmed, finding that the sheriff's sexual harassment was sufficiently severe and pervasive to alter the conditions of the officer's employment, and the officer had a clearly established right to be free from a hostile work environment. The court found that the female correctional officer's conduct in informing the chief deputy sheriff that she was uncomfortable continuing their sexual relationship was sufficient to demonstrate that the sheriff's continued actions in grabbing and hugging her were unwelcome, as required to prevail on her hostile-work-environment claim for sexual harassment under the Fourteenth Amendment. The court noted that the chief deputy sheriff had previously used sexual coercion to entice other female employees, and once an officer began viewing the sheriff's conduct as unwelcome, her employment status became jeopardized. (Dakota County Jail, Nebraska)

2013

U.S. Appeals Court
DISCRIMINATION
RECORDS

Armstrong v. *Brown*, 732 F.3d 955 (9th Cir. 2013). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, the plaintiffs moved for an order requiring officials to track and accommodate the needs of the class members housed in county jails and to provide a workable grievance procedure. The prisoners and parolees filed a renewed motion, which the district court granted. The defendants

appealed. The appeals court affirmed in part and dismissed in part. The court held that: (1) Amendments to the California Penal Code relating to the legal custody of parolees did not relieve officials of responsibility for the discrimination suffered by disabled parolees housed in county jails, past and present, or of their obligation to assist in preventing further Americans with Disabilities Act (ADA) violations; and (2) orders requiring officials to track and accommodate the needs of disabled prisoners and parolees housed in county jails and to provide a workable grievance procedure were consistent with the Americans with Disabilities Act (ADA) and the Rehabilitation Act and did not infringe on California's prerogative to structure its internal affairs. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
CONTRACT SERVICES
POLICIES/PROCEDURES
TRAINING

Belbachir v. *County of McHenry*, 726 F.3d 975 (7th Cir. 2013). The administrator of the estate of a female federal detainee who committed suicide in a county jail filed suit against the county, county jail officials, and employees of the medical provider that had a contract with the county to provide medical services at the jail, alleging violation of the detainee's due process rights and Illinois tort claims. The district court granted summary judgment in favor of all county defendants. The administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the jail inmate who was detained by federal immigration authorities pending her removal hearing was in the same position as a lawfully arrested pretrial detainee. The court noted that a pretrial detainee was entitled, pursuant to the due process clause, to at least as much protection during her detention as convicted criminals were entitled to under the Eighth Amendment--namely protection from harm caused by a defendant's deliberate indifference to the inmate's safety or health. The court asserted that persons who have been involuntarily committed are entitled, under the due process clause, to more considerate treatment during detention than criminals whose conditions of confinement are designed to punish. The court found that the alleged conduct of a clinical social worker at the county jail who interviewed the detainee, in noting that the detainee suffered from a major depressive disorder, hallucinations, acute anxiety, and feelings of hopelessness, but allegedly failing to report those findings to the jail guards or any other jail staff or to recommend that the detainee be placed on a suicide watch or receive mental health treatment, amounted to deliberate indifference to the detainee's risk of suicide, in violation of the detainee's due process rights. The court held that a nurse manager employed by the medical provider was not deliberately indifferent to the detainee's risk of suicide, as would violate the detainee's due process rights, where the nurse manager treated the detainee for panic attacks and anxiety, and recommended that she be given a cellmate and transferred to a medical treatment area at the jail, both of which were done, and there was no showing that the nurse manager knew that the detainee was suicidal. According to the court, the county sheriff's and county jail director's failure to provide annual training to jail staff on how to recognize the risk of suicide in detainees, and their failure to implement a suicide prevention policy, did not render the county liable under § 1983 for the detainee's suicide during her detention at the jail, absent a showing that such failures caused the detainee's suicide. (McHenry County Jail, Illinois)

U.S. District Court
CONTRACT SERVICES

Benton v. *Rousseau*, 940 F.Supp.2d 1370 (M.D.Fla. 2013). A pretrial detainee, who alleged that he was beaten by drivers while being transported to prison, brought a § 1983 action against drivers of a private company which was in the business of transporting prisoners throughout the State of Florida. The district court held that the inmate established a § 1983 First Amendment retaliation claim and a § 1983 Fourteenth Amendment excessive force claim. According to the court: (1) the prisoner engaged in constitutionally protected speech because he complained about conditions of his confinement in the transport vehicle; (2) the driver of transport vehicle engaged in adverse or retaliatory conduct by pulling the inmate out of the van and onto the ground and beating and kicking the inmate; and (3) there was a causal connection between the driver's retaliatory action and inmate's protected speech, in that the incident would not have occurred but for the inmate's complaints regarding conditions of his confinement. The court noted that the inmate's injuries included headaches and facial scars, and his injuries, although perhaps not serious, amounted to more than de minimis injuries. The court ruled that the inmate was entitled to $45,012 in compensatory damages because the inmate had scarring on his face and suffered from headaches and numbness in his side, he suffered the loss of a $12 shirt, and he suffered mental and emotional anguish as a result of actions of drivers of transport van, who kicked and beat him. The court held that the inmate was entitled to punitive damages in the amount of $15,000 based on the violation of his First and Fourteenth Amendment rights by the drivers. The court noted that although the drivers were no longer employed by their private employer, the employer did not investigate after the incident nor did it punish the drivers for their actions, and imposition of punitive damages would deter the drivers from taking similar actions in the future. (United States Prisoner Transport, Hernando County Jail, Florida)

U.S. District Court
POLICIES/PROCEDURES

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 court's 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 Corr'l. Facility, Indiana)

U.S. District Court
RECORDS

Brooks v. *U.S. Dept. of Justice*, 959 F.Supp.2d 1 (D.D.C. 2013). A federal prisoner brought an action against the Department of Justice (DOJ) alleging violations of the Privacy Act. DOJ moved to dismiss. The district court granted the motion. The court held that a constitutional claim arising from alleged violations of the Privacy Act was not cognizable. The court also found that the prisoner could not maintain an action under the Privacy Act seeking reassessment of his custody classification by BOP and a designation to a lower security facility, based on alleged errors in information in the presentence investigation report (PSI) that had been prepared in connection with his prior offense, which BOP allegedly relied on in deeming him ineligible for designation to a lower security facility. The court noted that BOP had exempted the Inmate Central Records System and the files maintained therein from the substantive provision of the Act regarding its recordkeeping obligations. (U.S. Dept. of Justice, Bureau of Prisons)

U.S. District Court
CONTRACT SERVICES

Bustetter v. *Armor Correctional Health Services, Inc.,* 919 F.Supp.2d 1282 (M.D.Fla. 2013). A former inmate brought an action against a sheriff's department, the sheriff, a medical services contractor, a doctor, a nurse, and a pharmacy, alleging medical malpractice, negligence, and violations of § 1983. The inmate alleged that the medical services contractor had a policy of not telling an inmate what medications he was being given, that the contractor had another policy of providing no medications if an inmate refused to take any of his medications, that measurement of his blood sugar levels and administration of his insulin to treat his diabetes was limited to twice a day, that he was given excess levels of statins, and that he was not informed, upon his release, of what medication he was given or of its side-effects. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the inmate's allegations were sufficient to state Eighth Amendment claims against the contractor, nurse, and doctor. When he was taken into custody at the jail for a non-violent traffic offense, the inmate informed the medical staff of his medical conditions and current medications. The inmate's medical conditions included Type I diabetes, for which he was insulin dependent and taking two types of insulin three to five times per day, a prior heart attack, and blindness in one eye. (Sarasota County Jail, Florida)

U.S. District Court
POLICIES/PROCEDURES

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
FOIA- Freedom of Information Act

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. Appeals Court
PROPERTY
POLICIES/PROCEDURES

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
CONTRACT SERVICES

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 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
CONTRACT SERVICES

Estate of Henson v. *Wichita County*, 988 F.Supp.2d 726 (N.D.Tex. 2013). Family members of a pretrial detainee who died from chronic obstructive pulmonary disease (COPD) while being held in a county jail brought a § 1983 action against a county and a jail physician, among others, for violation of the detainee's Fourth and Fourteenth Amendment rights, and asserted claims under state law for negligence and breach of contract. The defendants moved for summary judgment based on qualified immunity. The district court granted the motions in part, and denied in part. The physician and the county moved for reconsideration. The district court granted the motion, finding that the physician was not subject to supervisory liability under § 1983, absent any finding that the nurse refused to treat the detainee, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical need. The court held that the county was not liable in the § 1983 claim brought by family members, absent a showing of an underlying constitutional violation by a county employee or a county policy that permitted or caused some constitutional violation. (Wichita County Jail, Texas)

U.S. District Court
CONTRACT SERVICES
POLICIES/PROCEDURES

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
DISCRIMINATION
EMPLOYEE QUALIFICATIONS
POLICIES/PROCEDURES

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 summary judgment was precluded by a genuine issue of material fact as to whether the sheriff's proffered legitimate, non-discriminatory reason for promoting a male deputy to the position of captain of jail administration, rather than the female deputies--2namely, that the male deputy had relevant experience and that he was the only candidate who had been w2orking in that area for years under a captain the sheriff was seeking to replace-- was a pretext for gender discrimination in violation of Title VII and § 1983. The court also found a genuine issue of material fact as to whether the male county sheriff's proffered legitimate, non-discriminatory reason for denying a female deputy comp time, namely, that the deputy had been exempt from accruing comp time for 20 years, was a pretext for gender discrimination. The court held that the newly-elected male sheriff's proffered legitimate, non-discriminatory reason for transferring the female deputy from the position of jail commander to a clerk of the

Recorder's Court-- that the sheriff was dissatisfied with the way jail had been operating under the deputy and he felt that members of the deputy's staff were unprofessional-- was not a pretext for gender discrimination. (Muscogee County Sheriff, Muscogee County Jail, Georgia)

U.S. District Court
POLICIES/ PROCEDURES

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 Det. Facility, District of Columbia)

U.S. District Court
CONTRACT SERVICES
POLICIES/PROCEDURES

Harrelson v. *Dupnik*, 970 F.Supp.2d 953 (D.Ariz. 2013). The mother of 17-year-old inmate who died while housed at a county jail brought an action in state court against the county, the county sheriff, the healthcare provider which contracted with the county to provide medical and mental health care at the jail, and employees of the provider, individually and on behalf of the inmate's estate, alleging under § 1983 that the defendants were deliberately indifferent to the inmate's serious medical needs. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that: (1) the county defendants' duty to provide medical and mental health services to an inmate was non-delegable; (2) intervening acts of the medical defendants did not absolve the county defendants of liability for alleged negligence; (3) the mother failed to state a claim for wrongful death; (4) the county was not deliberately indifferent to the inmate's rights; (5) the provider was not subject to liability; but (6) a fact issue precluded summary judgment as to an Eighth Amendment medical claim against the employees.

According to the court, the duty of the county and the county sheriff to provide medical and mental health services to the 17-year-old county jail inmate, who suffered from bipolar disorder and depression, was non-delegable, and thus the county and sheriff were subject to vicarious liability, under Arizona law, for the alleged medical malpractice of the healthcare provider which contracted with the county to provide medical and mental health services at the jail. The court noted that there was no evidence that the legislature intended to permit the county or sheriff to delegate their duties and obligations they owned to the inmate.

The court found that the intervening acts of the contract medical provider, in allegedly failing to properly diagnose and treat the inmate's medical and mental health needs, both before and after the inmate received an injection of a psychotropic medication, were not so extraordinary as to absolve the county and the county sheriff of liability for their failure to protect the inmate.

The court found that there was no evidence that the county jail's policy or custom of placing inmates in protective custody for their own protection amounted to deliberate indifference to the constitutional rights of the inmate, who died while on protective custody status. According to the court, there was no evidence that the county had actual notice of a pattern of risk of harm or injury as a result of the county jail officials' use of isolation, or an administrative segregation policy in the juvenile detention housing unit at the county jail, or that any omissions in the county's policies necessarily gave rise to the situation in which the inmate, died from a purported cardiac event.

The court found that summary judgment was precluded by genuine issues of material fact as to whether the inmate's prescribing physician knew of the inmate's serious medical need for a full psychiatric assessment, and failed to timely provide that assessment, and as to whether jail medical personnel were aware that the inmate was suffering from a reaction to a psychotropic medication or unknown serious medical illness, and, if so, whether they were deliberately indifferent. (Pima County Adult Detention Complex, and Conmed Healthcare Management, Inc., Arizona)

U.S. Appeals Court
BUDGET
POLICIES/PROCEDURES
STAFF LEVELS
VOLUNTEERS

Hartmann v. *California Dept. of Corrections and Rehabilitation*, 707 F.3d 1114 (9th Cir. 2013). California state prisoners brought a § 1983 action against, among others, the California Department of Corrections (CDCR), alleging that the defendants violated their state and federal constitutional rights to exercise their religious beliefs by refusing to hire a paid, full–time, Wiccan chaplain and by failing to apply neutral criteria in determining whether paid chaplaincy positions were necessary to meet the religious exercise needs of inmates adhering to certain religions. The district court dismissed claims against the California State Personnel Board and its individual members, and, dismissed claims against the state, its governor, and various other agencies and individuals. The prisoners appealed.

The appeals court affirmed in part and reversed in part. The court held that: (1) the First Amendment did not require CDCR to provide inmates with chaplain of their choice, regardless of whether the number of Wiccan inmates was greater than the number of inmates practicing faiths for which CDCR did provide staff chaplain, because the prisoners had a reasonable opportunity to exercise their faith via the services of staff chaplains and a volunteer Wiccan chaplain that they already received; (2) the prison policy did not violate prisoners' rights under the Equal Protection Clause where the prison provided the plaintiffs with a volunteer Wiccan chaplain when available, made staff chaplains available to all prisoners to assist in their religious exercise, and the prison administration considered the prisoners' requests at three different levels of review before determining that services were sufficient without hiring a full–time Wiccan chaplain; (3) the prisoners did not plead that their religious exercise was so burdened as to pressure them to abandon their beliefs, precluding their claim that the prison administration violated their rights under Religious Land Use and Institutionalized Persons Act (RLUIPA); (4) two prison officials were proper official–capacity defendants on the prisoners' claim for

injunctive relief where the prisoners sought an affirmative injunction requiring the prison administration to adopt and apply neutral criteria in determining chaplain hiring needs and they alleged that each official was responsible for the policies and practices of the California Department of Corrections (CDCR), as well as the day–to–day operation of the prison; and, (5) permitting prisoners to amend complaint was unwarranted on futility grounds. But the court found that the prisoners did state a claim for violation of the First Amendment's Establishment Clause by alleging that the prison administration created staff chaplain positions for five conventional faiths, refused to hire a paid, full–time, Wiccan chaplain, and failed to apply neutral criteria in evaluating whether the growing membership in minority religions warranted reallocation of resources used in accommodating inmates' religious exercise needs. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
CONTRACT SERVICES

Hazle v. *Crofoot*, 727 F.3d 983 (9th Cir. 2013). A parolee, who was an atheist, brought an action against various state officials and a state contractor, seeking damages and injunctive relief for the deprivation of his First Amendment rights, after his parole was revoked following his refusal to participate in a residential drug treatment program that required him to acknowledge a higher power, as a condition of his parole. The contractor, Westcare, was a private regional substance abuse coordination agency, and made the arrangements for the parolee's placement in the program. After the parolee was granted partial summary judgment by the district court, a jury awarded the parolee zero damages. The district court denied the parolee's motion for a new trial, and the parolee appealed. The appeals court reversed and remanded. The court held that the parolee was entitled to an award of compensatory damages for each day that he spent in prison as a result of the violation of his First Amendment rights by various state officials.

The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the contractor's conduct was the proximate cause of the parolee's unconstitutional imprisonment, when it contracted only with drug treatment facilities offering solely religious based programs or services, and counseled and arranged for the parolee to attend a religion-based facility as part of his state-imposed parole program, despite having been informed that the parolee was an atheist and that he objected to such religious programming.

The court held that the parolee's claim under California law for an injunction preventing both a state contractor and various state officials from expending state funds in an unconstitutional manner that required parolees to participate in religious treatment programs in order to be eligible for parole, failed to provide parolees with secular or non-religious treatment alternatives, and revoked the parole of those who protested or resisted participation in religion-based treatment programs, was not rendered moot after the state issued a directive stating that parole agents could not require a parolee to attend any religious based program if the parolee refused to participate for religious reasons, where the state directive had not been implemented in any meaningful fashion. (California Department of Corrections and Rehabilitations, Board of Parole Hearings, Westcare, and Empire Recovery Center, California)

U.S. District Court
POLICIES/PROCEDURES
TRAINING

Holscher v. *Mille Lacs County*, 924 F.Supp.2d 1044 (D.Minn. 2013). Trustees for the next-of-kin of a pretrial detainee who committed suicide while incarcerated at a county jail brought an action against the county, alleging under § 1983 that the county provided inadequate medical care to the detainee, in violation of his due process rights. The trustees also asserted related claims for negligence and wrongful death under state law. The 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 detainee's suicide. (Mille Lacs County Jail, Wisconsin)

U.S. Appeals Court
POLICIES/PROCEDURES
STAFF DISCIPLINE

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
CONTRACT SERVICES
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 CONTRACT SERVICES 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. District Court CONTRACT SERVICES	*Kelly* v. *Wengler*, 979 F.Supp.2d 1243 (D.Idaho 2013). Prisoners seeking to have a private prison contractor held in civil contempt for violating the parties' settlement agreement moved to unseal related documents. The district court held that the filings in the civil contempt proceedings would not be kept under seal. The court noted that the settlement agreement did not state that disputes would be private. And the court found: "It is hardly private spite, promotion of public scandal, or libelous, to contend that CCA is wrong, and to submit sworn affidavits from past and current employees in support of that argument. Idaho taxpayers pay CCA to operate one of their prisons. With public money comes a public concern about how that money is spent. Such a public interest cannot be swatted away by calling it a desire for 'public spectacle,' or a form of 'private spite,' or any of the other labels that CCA offers." In July 2014 the Department of Corrections assumed control of the facility. (Corrections Corporation of America, Idaho Department of Correction, Idaho Correctional Center)
U.S. District Court CONTRACT SERVICES POLICIES/PROCEDURES TRAINING	*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. (Unity Health Care, Inc., Central Detention Facility, District of Columbia)
U.S. District Court CONTRACT SERVICES POLICIES/PROCEDURES TRAINING	*Konah* v. *District of Columbia*, 971 F.Supp.2d 74 (D.D.C. 2013). A licensed practical nurse (LPN), formerly employed by a private health care corporation that contracted with the District of Columbia to provide medical care to inmates, brought a § 1983 action against the District, alleging that its failure to train correctional employees to adequately respond to inmates' sexual abuse of staff violated her right to equal protection under the Fifth Amendment's Due Process Clause. The District moved for summary judgment. The district court granted the motion. The court held that: (1) the alleged inadequate training of correctional officers was not the cause of the LPN's sexual harassment; (2) evidence did not show that the District was deliberately indifferent to the risk of sexual harassment; and (3) even if the District was on notice of the risk to nurses, its response did not show deliberate indifference. The court found that the precipitating cause of the sexual harassment of the nurse by inmates while distributing medications at the jail was the LPN's decision to violate longstanding jail policy and deviate from her standard practice of waiting for a correctional officer to escort her before entering the jail's housing unit. The court noted that the District collaborated with the LPN's employer to institute a policy directing nurses to distribute medications from sick-call rooms, and responded when the LPN was sexually harassed by inmates by ordering an immediate medical evaluation, a meeting with the warden, and offering criminal prosecution of the inmate. (D.C. Central Detention Facility, District of Columbia)
U.S. Appeals Court POLICIES/PROCEDURES	*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 had no 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
HARASSMENT
STAFF DISCIPLINE
WORKING CONDITIONS

Meadors v. *Ulster County*, 984 F.Supp.2d 83 (N.D.N.Y. 2013). Female county corrections officers brought an action under § 1983, Title VII, and the New York State Human Rights Law (NYSHRL) against a county, a sheriff, a jail superintendent, and a deputy jail superintendent, alleging sex discrimination, hostile work environment, sexual harassment, retaliation, and negligent infliction of emotional distress. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the female corrections officers' work environment was hostile and abusive; (2) whether the county had a good faith complaint procedure; and (3) whether the county treated a female corrections officer differently than similarly-situated male officers with regard to discipline, for matters that occurred outside the workplace. The court held that county officials did not retaliate against a female corrections officer, in violation of Title VII, for filing a discrimination charge with the Equal Employment Opportunity Commission (EEOC), even though her supervisor revoked her shift change, another supervisor assigned her to an undesirable unit, and she was not selected for a desirable intake position. The court also found that county jail officials' reassignment of a female corrections officer to a different position after she verbally complained about a co-worker's sexual harassment, even if it was a less desirable position, did not constitute a materially "adverse employment action" required to support her Title VII retaliation claim. According to the court, county jail officials' rescission of a female corrections officer's request for light duty assignments during her pregnancy, her reassignment to work in male housing units, and her receipt of a written discipline report for noting her reassignment, did not constitute materially "adverse employment actions" required to support her Title VII retaliation claim. (Ulster County Jail, New York)

U.S. District Court
CONTRACT SERVICES
DISCRIMINATION

Morris v. *Carter Global Lee, Inc*., 997 F.Supp.2d 27 (D.D.C. 2013). An African-American employee brought an action against his former employer, a contractor for the District of Columbia Department of Corrections, in the Superior Court of the District of Columbia, alleging wrongful termination and violation of his civil rights under the Fourteenth Amendment, Title VII, § 1981, and other various statutes. The employer removed the action to federal court and moved to dismiss. The federal district court granted the motion in part and denied in part. The court held that the employee stated a claim against his former employer under § 1981, even though the employee's complaint contained no mention of his race or racial discrimination in the termination of his employment contract, where the defendant attached to his amended complaint his charge of discrimination filed with the District of Columbia Office of Human Rights, and made a presentation to the Equal Employment Opportunity Commission (EEOC). The employee alleged, "I was terminated for alleged gross misconduct," and "I believe I have been discriminated against because of my race (Black American) and age (54), in violation of Title VII." (District of Columbia Jail, Carter Goble Lee [CGL] Contractors)

U.S. District Court
POLICIES/PROCEDURES
TRAINING

Morris v. *Dallas County*, 960 F.Supp.2d 665 (N.D.Tex. 2013) The parents of a detainee who died while in custody at a county jail brought a § 1983 action in state court against the county, the county jail medical staff, and officials, alleging violation of the Americans with Disabilities Act (ADA) and constitutional violations. The action was removed to federal court. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment for the defendants was precluded by fact issues with regard to: (1) the nurses who were defendants; (2) the claim that the county failed to monitor the detainee's health; and (3) failure to train officers on how to observe and assess the jail detainees' medical needs and respond to those needs. The court noted that the way the jail infirmary was structured, including the lack of direct access between the detainees and the nursing staff, and the absence of procedures for communication between the nurses and the correctional officers concerning emergent medical symptoms, were a county custom. According to the court, whether that custom was adopted or continued, even though it was obvious that its likely consequence would be a deprivation of medical care for the detainees, precluded summary judgment in favor of the county in the § 1983 deliberate indifference claim brought against the county. (Dallas County Jail, Texas)

U.S. District Court
INSPECTION

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
POLICIES/PROCEDURES

Mutawakkil v. *Huibregtse*, 735 F.3d 524 (7th Cir. 2013). An inmate brought an action alleging that a Wisconsin prison policy that required inmates to use their committed names in conjunction with a second name unless a state court approved a change-of-name application, in violation of the First Amendment, the Equal Protection Clause, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment for the defendants and the inmate appealed. The appeals court affirmed. The appeals court held that the policy did not violate either the speech clause or the free-exercise clause of the First Amendment. The court found that the policy did not violate the Equal Protection Clause, absent an allegation that any inmate, of any race or religion, was allowed to change his name on his own say-so after being convicted. The court found that the policy did not create a substantial burden on the inmate's religious exercise, as would violate RLUIPA. The court noted that the dual name requirement served the compelling governmental interest of maintaining prison

security, and the requirement was the least restrictive means of satisfying that interest. The court commented on the name of the statute: "…which often goes by the unpronounceable initialism RLUIPA but which we call 'the Act' so that the opinion can be understood by normal people." (Wisconsin Department of Corrections)

U.S. District Court
CONTRACT SERVICES
POLICIES/PROCEDURES

Pena v. *Greffet*, 922 F.Supp.2d 1187 (D.N.M. 2013). A female former state inmate brought a § 1983 action against a private operator of a state prison, the warden, and corrections officers, alleging violation of her civil rights arising under the Fourth, Eighth, and Fourteenth Amendments, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate's complaint stated claims against the operator and the warden for violations of the Eighth and Fourteenth Amendment, and for First Amendment retaliation. The inmate alleged that the operator and the warden engaged in practices of placing inmates who reported sexual abuse in segregation or otherwise retaliating against them, violating its written policies by failing to report allegations of prison rape to outside law enforcement, failing to conduct adequate internal investigations regarding rape allegations, and offering financial incentives to prison employees for non-reporting of rape allegations. The inmate alleged that the operator and the warden placed her in segregation for eight months because she reported a corrections officer's rape and another officer's assault, that the operator and warden were aware of her complaints, and that her placement in segregation was in close temporal proximity to the complaints. (New Mexico Women's Correctional Facility, Corrections Corporation of America)

U.S. Appeals Court
BUDGET

Peralta v. *Dillard*, 704 F.3d 1124 (9th Cir. 2013). An inmate brought a civil rights action against a prison dentist, alleging deliberate indifference to his serious medical needs. The district court entered judgment in favor of the dentist, and the inmate appealed. The appeals court affirmed. The court held that the dentist could not be held personally liable for deliberate indifference to the inmate's serious medical needs if he could not render or cause to be rendered the needed dental services because of a lack of resources that he could not cure. The court noted that the dentist and other doctors tried to address the shortage through various means, including requests for more resources and changing staff schedules to allow staff to see more patients, but they had no control over the staffing budget, which was set at the state level. (California State Prison, Los Angeles County)

U.S. District Court
POLICIES/PROCEDURES

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. District Court
POLICIES/PROCEDURES

Prison Legal News v. *Babeu*, 933 F.Supp.2d 1188 (D.Ariz. 2013). A non-profit organization that produced and distributed a monthly journal and books to inmates brought an action against county jail officers and mailroom employees, alleging that the defendants violated its First Amendment and due process rights by failing to deliver its materials to its subscribers at the jail. The parties cross-moved for partial summary judgment. The court granted the motions in part, denied in part, and deferred in part. The court held that the jail's policy limiting incoming inmate correspondence to one-page and postcards did not violate the First Amendment, where there was an apparent common-sense connection between the jail's goal of reducing contraband and limiting the number of pages a particular piece of correspondence contained, and sufficient alternative avenues of communication remained open for publishers who wished to communicate with inmates at the jail. But the court held that the jail's failure to give the non-profit organization notice and the opportunity to appeal the jail's refusal to deliver its materials to inmates violated the organization's procedural due process rights. The court 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. (Pinal County Jail, Arizona)

U.S. District Court
POLICIES/PROCEDURES

Prison Legal News v. *Columbia County*, 942 F.Supp.2d 1068 (D.Or. 2013). A publisher filed a § 1983 action alleging that a county and its officials violated the First Amendment by rejecting dozens of its publications and letters mailed to inmates incarcerated in its jail and violated the Fourteenth Amendment by failing to provide it or the inmates with the notice of, and opportunity to, appeal the jail's rejection of its publications and letters. A

bench trial was held, resulting in a judgment for the publisher. The court held that: (1) the policy prohibiting inmates from receiving mail that was not on a postcard violated the First Amendment; (2) the county had a policy of prohibiting inmates from receiving magazines; (3) the county failed to provide adequate notice of withholding of incoming mail by jail authorities; (4) entry of a permanent injunction prohibiting officials from enforcing the postcard-only policy was warranted; and (5) a permanent injunction prohibiting officials from enforcing the prohibition against magazines was not warranted. (Columbia County Jail, Oregon)

U.S. District Court
RECORDS

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. (Cumberland County Department of Corrections, New Jersey)

U.S. Appeals Court
POLICIES/PROCEDURES

Rich v. *Secretary, Florida Dept. of Corrections*, 716 F.3d 525 (11th Cir. 2013). A prisoner brought an action against the Florida Department of Corrections and corrections officials for money damages and injunctive relief, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA), based on their failure to provide him with a strictly kosher diet. The district court entered summary judgment for the Department and the officials. The prisoner appealed. The appeals court reversed and remanded. The court held that Florida's plan to provide kosher meals to prisoners did not render the prisoner's claim moot because the new plan was not an unambiguous termination of its policy which had deprived the prisoner of kosher meals. The court found that summary judgment was precluded by fact issues as to whether denial of kosher meals was in furtherance of a compelling government interest, and as to whether denial of kosher meals was the least restrictive means to further the cost and security interests that were asserted. (Union Corr'l. Institution, Florida)

U.S. District Court
DISCRIMINATION
HARASSMENT
OVERTIME

Rother v. *NYS Dept. of Corrections and Community Supervision*, 970 F.Supp.2d 78 (N.D.N.Y. 2013). A female corrections officer brought an action against a state department of corrections, correctional facility, supervisors and coworkers, alleging sex discrimination and retaliation under Title VII, denial of equal protection pursuant to § 1983, denial of due process under the Fourteenth Amendment, First Amendment retaliation, conspiracy under § 1985, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The officer alleged that a coworker told the officer, in front of inmates, coworkers, and the officer's subordinates, that she had received an administrative-sergeant position by performing sexual favors and that she was a "bitch and a backstabber," "a stupid cunt," and a "whining bitch" who "sucked." She alleged that she was subjected to discriminatory coworker shunning and tire-slashing threats, assignment denials, performance criticisms, discipline, vigilant monitoring, and denial of overtime and leave pay denials. The appeals court held that, through the description of the emotional and psychological toll of her treatment, the officer subjectively perceived her work environment to be abusive.

The court found that the officer's complaint alleged the "materially adverse action" element of a Title VII retaliation claim against a correctional facility and the state department of corrections by alleging that she endured unmerited criticism and discipline, failure to remedy a coworker's mistreatment, repeated coworker shunning and threats of tire slashing, video-camera monitoring, denial of vacation pay, and delay in filling out workers' compensation paperwork. The court also held that the officer's complaint stated a § 1983 claim against the state department of corrections and the correctional facility for violation of the Equal Protection Clause, where her complaint alleged that no male employee was subjected to the treatment of which she complained, and that the officer was criticized and disciplined repeatedly for proper and innocuous conduct while a male coworker received no criticism or discipline for his patently improper and inappropriate verbal tirade, which included explicitly sexist language. According to the court, the state's commissioner of corrections, by virtue of his supervisory position, had both a direct connection to the alleged gender discrimination against the female corrections officer, and the authority to reinstate and transfer the officer, supporting her § 1983 equal protection claim against the commissioner in his official capacity seeking injunctive or declaratory relief. (Coxsackie Correctional Facility, N.Y. State Department of Corrections and Community Supervision)

U.S. District Court
CONTRACT SERVICES
HARASSMENT
WORKING CONDITIONS

Stoner v. *Arkansas Dep. of Correction*, 983 F.Supp.2d 1074 (E.D.Ark. 2013). A nurse employed by a company which contracted with the Arkansas Department of Correction (ADC) to provide on-site medical services to ADC inmates brought an action against ADC, a warden, and the company under Title VII and the Arkansas Civil Rights Act for gender discrimination and retaliation. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the ADC was the prison nurse's employer for purposes of the nurse's Title VII gender discrimination and retaliation claims against ADC and a warden. According to the court, although the nurse was hired by a company which contracted with ADC to provide on-site medical services to inmates, ADC trained company employees on sexual harassment policies and reporting requirements, the warden held company employees accountable to the same standards as ADC employees, and the warden had the ability to ban the nurse from the prison complex, effectively terminating her employment. The court held that the warden employed by ADC was subject to personal liability with respect to the female former prison nurse's claims for gender discrimination under § 1983 and the Arkansas Civil Rights Act (ACRA), where the nurse's right to be free from gender discrimination was secured by the Equal Protection

Clause, and her right to be free from retaliation based on protected speech was secured by the First Amendment, and the warden, as a prison authority, was acting under the color of state law.

According to the court, the alleged harassment of the nurse by the prison warden was not part of the same employment practice as a correctional officer's prior alleged harassment of the nurse, and thus the warden's alleged harassment did not constitute a continuing violation for the purposes of the nurse's Title VII hostile work environment claim. The court noted that the alleged conduct was committed by different actors, and the harassment seemed to have been motivated by different animus, specifically, the officer's harassment was based on sex, while the warden's harassment was based on retaliation. The court held that ADC took prompt and effective remedial action after learning of the male correctional officer's alleged sexual harassment of the female nurse, and thus ADC could not be held liable under Title VII for the alleged hostile work environment created by the officer's conduct, nor could the company be held liable as a third-party for such alleged conduct. (Correctional Medical Services, and Arkansas Department of Correction, McPherson Unit)

U.S. Appeals Court
EMPLOYEE UNION
POLICIES/PROCEDURES

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
STAFF DISCIPLINE

Volkman v. *Ryker*, 736 F.3d 1084 (7th Cir. 2013). An employee at a correctional center brought a § 1983 action against various officials alleging retaliation in violation of the First Amendment arising from the issuance of a written reprimand and suspension following his comments to a state attorney regarding the criminal prosecution of a co-worker. The district court entered summary judgment in favor of the defendants. The employee appealed. The appeals court affirmed. The appeals court held that the employee failed to show that a reasonable official would have known that to restrict or punish his speech regarding a co-worker's punishment was unconstitutional at the time of his discipline, as required for the employee to defeat a supervisors' claims of qualified immunity from the employee's § 1983 claim of retaliation in violation of his First Amendment speech rights. According to the court, the Illinois Department of Corrections' interests in suppressing the speech of a supervisor at a correctional facility regarding a co-worker's discipline outweighed the supervisor's interests in making the speech, and, thus, the supervisor's First Amendment speech rights were not violated when he was disciplined for such speech. The court noted that supervisors were tasked with enforcing rules and regulations, and when the supervisor criticized a disciplinary decision it undermined respect for the chain-of-command, and there was value in maintaining order and respect in the paramilitary context of a correctional center. (Lawrence Correctional Center, Illinois)

U.S. District Court
CONTRACT SERVICES

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
CONTRACT SERVICES
POLICIES/PROCEDURES

Vollette v. *Watson*, 978 F.Supp.2d 572 (E.D.Va. 2013). Employees of private contractors providing services to inmates housed at a jail brought a § 1983 action against a sheriff and deputy sheriffs, alleging that they were subjected to unlawful strip and visual body cavity searches at the jail. The next business day after the suit was filed, the sheriff issued a blanket order revoking the security clearances of the contractor's employees who were

still working at the jail. The district court denied the employees' motion for a preliminary injunction ordering the sheriff to reinstate their security clearances at the jail pending the outcome of the litigation. The district court also partially granted and partially denied the defendants' summary judgment motion. A jury decided the constitutionality of the strip searches. This left the First Amendment retaliation claim by six of the nine plaintiffs. The district court entered summary judgment for the plaintiffs on the retaliation claim. The court held that: (1) the contractor's employees suffered irreparable injury from the sheriff's revocation of their security clearances for which there was no adequate remedy at law; (2) the balance of hardships plainly weighed in favor of a permanent injunction; (3) the public interest would be enhanced by the entry of a permanent injunction; and (4) the plaintiffs demonstrated violation of their First Amendment rights, and the sheriff had to reinstate their security clearances and update any relevant internal jail records to reflect the same. The court noted that the sheriff's candid statements that he felt betrayed by the federal lawsuits filed by the employees who were subjected to strip searches for contraband, and that the suits “pushed [him] over the edge” were an admission that the adverse employment action of revoking the employees' security clearances was taken against them in response to their exercise of their First Amendment constitutional rights to free speech and to petition the government for redress of grievances. (Portsmouth City Jail, Virginia)

U.S. Appeals Court
CONTRACT SERVICES

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
FOIA- Freedom of Information Act
RECORDS

White v. *Department of Justice*. 952 F.Supp.2d 213 (D.D.C., 2013). A federal prisoner brought a Freedom of Information Act (FOIA) action against the Department of Justice (DOJ) seeking records pertaining to him. Following denial of DOJ's motion to dismiss or for summary judgment, DOJ renewed its motion for summary judgment. The district court granted the motion. The court held that: (1) DOJ conducted a search reasonably calculated to locate the responsive records; (2) Executive Office for United States Attorneys (EOUSA) had no obligation to search for the records; and (3) EOUSA properly withheld the records as attorney work-product. (U.S. Dept. of Justice, Mail Referral Unit, Washington, D.C.)

U.S. Appeals Court
POLICIES/PROCEDURES
TRAINING

Wilson v. *Montano*, 715 F.3d 847 (10th Cir. 2013). An arrestee brought a § 1983 action against a county sheriff, several deputies, and the warden of the county's detention center, alleging that he was unlawfully detained, and that his right to a prompt probable cause determination was violated. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The detainee had been held for 11 days without a hearing and without charges being filed. The appeals court held that the defendants were not entitled to qualified immunity from the claim that they violated the arrestee's right to a prompt post-arrest probable cause determination, where the Fourth Amendment right to a prompt probable cause determination was clearly established at the time. The court held that the arrestee sufficiently alleged that the arresting sheriff's deputy was personally involved in the deprivation of his Fourth Amendment right to a prompt probable cause hearing, as required to support his § 1983 claim against the deputy. The arrestee alleged that he was arrested without a warrant, and that the deputy wrote out a criminal complaint but failed to file it in any court with jurisdiction to hear a misdemeanor charge until after he was released from the county's detention facility, despite having a clear duty under New Mexico law to ensure that the arrestee received a prompt probable cause determination. According to the court, under New Mexico law, the warden of the county's detention facility and the county sheriff were responsible for policies or customs that operated and were enforced by their subordinates, and for any failure to adequately train their subordinates. The court noted that statutes charged both the warden and the sheriff with responsibility to supervise subordinates in diligently filing a criminal complaint or information and ensuring that arrestees received a prompt probable cause hearing. The court found that the arrestee sufficiently alleged that the warden promulgated policies that caused the arrestee's prolonged detention without a probable cause hearing, and that the warden acted with the requisite mental state, as required to support his § 1983 claim against the warden, regardless of whether the arrestee ever had direct contact with the warden. The arrestee alleged that the warden did not require filing of written criminal complaints, resulting in the detainees' being held without receiving a probable cause hearing, and that the warden acted with deliberate indifference to routine constitutional violations at the facility. The court held that the arrestee sufficiently alleged that the county sheriff established a policy or custom that led to the arrestee's prolonged detention without a probable cause hearing, and that the sheriff acted with the requisite mental state, as required to support his § 1983 claim against the sheriff, by alleging that: (1) the sheriff allowed deputies to arrest people and wait before filing charges, thus resulting in the arrest and detention of citizens with charges never being filed; (2) the sheriff was deliberately indifferent to ongoing constitutional violations occurring under his supervision and due to his failure to adequately train his employees; (3) routine warrantless arrest and incarceration of citizens without charges being filed amounted to a policy or custom; and (4) such policy was the significant moving force behind the arrestee's illegal detention. (Valencia County Sheriff's Office, Valencia County Detention Center, New Mexico)

U.S. District Court
CONTRACT SERVICES
EMPLOYEE QUALIFICATIONS

Yeager v. *Corrections Corp. of America*, 944 F.Supp.2d 913 (E.D.Cal. 2013). A former correctional employee brought an action against his private corrections employer, alleging failure to engage in a good faith interactive process, disability discrimination in violation of the California Fair Employment and Housing Act (FEHA), and FEHA retaliation. The employer moved for summary judgment and summary adjudication. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded in the employee's failure to engage in a good faith interactive process claim, by a genuine issue of material fact as to whether, under California law, there were reasonable accommodations available to the employee who sought them, due to a knee injury. The court also held that summary judgment was precluded on the employee's disability claim, due to genuine issues of material fact as to whether the employer's proffered reason for terminating the employee, that the employee did not pass a background check, was a pretext for disability discrimination. (Corrections Corporation of America, California City Correctional Center, California)

2014

U.S. District Court
POLICIES/PROCEDURES
CONTRACT SERVICES
TRAINING

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 found that summary judgment was precluded by genuine issues of material fact: (1) concerning whether failure of the sheriff's office and the jail's medical services provider to provide adequate medical training to correctional officers caused the detainee's death; (2) as to whether the sheriff's office and the jail's medical services provider had an implicit policy of deliberate indifference to medical care provided to detainees; and (3) as to whether the sheriff's office and the jail's medical services provider had an express policy that prevented a nurse from restocking a particular medication until there were only eight pills left in stock and whether that policy was the moving force behind the pretrial detainee's seizure-related death. The court denied qualified immunity from liability to the correctional officers and the sheriff's office. (Grundy County Jail, Illinois)

U.S. District Court
INMATE FUNDS

Edmondson v. *Fremgen*, 17 F.Supp.3d 833 (E.D.Wis. 2014). An indigent prisoner brought a § 1983 action against the clerk of the state courts of appeals, alleging that the clerk violated various of his civil rights when she froze his inmate trust accounts until filing fees had been paid in two of his state appeals. The clerk moved to dismiss, and the prisoner moved for appointment of counsel. The district court granted the motion to dismiss and denied the motion to appoint counsel. The court held that freezing the prisoner's trust accounts did not violate his right to access the courts, did not violate the prisoner's right to procedural due process, and was not an illegal seizure. . According to the court, the indigent prisoner's right to access the courts were not violated, although not having the ability to spend money in his accounts prevented him from copying legal materials, where allowing the prisoner's appeals to proceed in the first place, by having deductions for filing fees made from his inmate trust accounts, did not injure his ability to access the courts. (Wisconsin)

U.S. Appeals Court
DISCRIMINATION
HARASSMENT
WORKING CONDITIONS

Ellis v. *Houston*, 742 F.3d 307 (8th Cir. 2014). African American corrections officers brought an action under § 1981 and § 1983 against prison administrators and supervisors, alleging race based harassment and retaliation, and disparate treatment. The district court granted summary judgment in favor of the defendants. The plaintiffs appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the officers had a subjective belief that the discrimination and harassment they experienced was severe and pervasive; (2) the officers established a broad pattern of harassment, and thus specific individual acts had to be viewed as illustrative; (3) the acts, comments, and inaction by a supervisor were purposeful and objectively actionable; (4) the officers suffered materially adverse consequences after they filed an official complaint, as required for a retaliation claim; (5) supervisors who permitted and participated in racially derisive remarks, and then assigned inferior work assignments, were not entitled to qualified immunity. The court noted that the officers experienced anxiety, dread, and panic attacks, they felt like they were being treated more like inmates than fellow officers, they initially enjoyed going to work but subsequently found their job to be depressing and anxiety-producing due to discrimination and harassment, they felt personally at risk because they no longer trusted that their fellow officers would come to their aid in a dangerous situation, and one officer's hair started to fall out from the stress he suffered. The officers had alleged that they experienced racist remarks on a near daily basis that supervisors had been present and laughing without objection to statements made by others, and each officer became aware of offensive remarks even if each individual did not hear it first-hand. Supervisors allegedly acted to intensify the pattern of harassment of African American corrections officers after they filed an official complaint of a racially hostile environment, subsequently assigning them inferior or less desirable jobs, "papering" their files with reports on trivial or invented misconduct, and singling them out for additional work details and consistently forcing them to take unpopular details. The court held that these were materially adverse employment actions sufficient to support the officer's prima facie case of retaliation under § 1981.

The court found that a reasonable prison supervisor would have understood that permitting and participating in racially derisive remarks, and then assigning inferior work assignments for reporting such conduct, would have violated the rights of the African American corrections officers, and thus the supervisors who did permit and participate in racially derisive remarks, and then assigned inferior work assignments, were not entitled to qualified immunity to the officers' hostile work environment and retaliation claims under § 1981 and § 1983. (Nebraska State Penitentiary)

U.S. District Court
POLICIES/PROCEDURES

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 Co. Sheriff's Office, Det. Center, North Carolina)

U.S. District Court
STAFFING LEVELS
POLICIES/PROCEDURES
TRAINING

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 found that the inmates sufficiently alleged that the private company that administered all jail health care facilities and services operated a place of public accommodation, as required to state a claim for violation of ADA Title III. The court noted that: "The complaint alleges a litany of substandard conditions at the jail, including: violence due to understaffing, overcrowding, inadequate training, policies, procedures, facilities, and prisoner classification; inadequate medical and mental health care screening, attention, distribution, and resources; and lack of policies and practices for identifying, tracking, responding, communicating, and providing accessibility for accommodations for prisoners with disabilities." (Monterey County Jail, California)

U.S. District Court
RECORDS

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
POLICIES/PROCEDURES
STAFFING LEVELS

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 held that the patients' allegations that commitment to MSOP essentially amounted to lifelong confinement, equivalent to a lifetime of criminal incarceration in a facility resembling, and run like, a medium to high security prison, sufficiently stated a § 1983 substantive due process claim pertaining to the punitive nature of the patients' confinement. 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. The court ordered that its court-appointed experts would be granted complete and unrestricted access to the documents the experts requested, including publicly available reports and documents related to the patients' lawsuit, as well as MSOP evaluation reports and administrative directives and rules. (Minnesota Sex Offender Program)

U.S. District Court
CONTRACT SERVICES

Kelly v. *Wengler*, 7 F.Supp.3d 1069 (D.Idaho 2014). State inmates filed a class action against a warden and the contractor that operated a state correctional center, alleging that the level of violence at the center violated their constitutional rights. After the parties entered into a settlement agreement the court found the operator to be in contempt and ordered relief. The inmates moved for attorney fees and costs. The district court granted the motions. The court held that the settlement offer made in the contempt proceeding, by the contractor that operated the state correctional facility, which provided an extension of the settlement agreement, required a specific independent monitor to review staffing for the remainder of the settlement agreement term, and offered to pay reasonable attorney fees, did not give the inmates the same relief that they achieved in the contempt proceeding, and thus the inmates' rejection of the offer did not preclude them from recovering attorney fees and costs they incurred in the contempt proceeding. The court noted that the inmates were already entitled to reasonable attorney fees in the event of a breach, and the inmates achieved greater relief in the contempt proceeding with regard to the extension and the addition of an independent monitor. After considering the totality of the record and the arguments by counsel, the court awarded the plaintiffs' counsel $349,018.52 in fees and costs. (Idaho Correctional Center, Corrections Corporation of America)

U.S. District Court
INSURANCE

LCS Corrections Services, Inc. v. *Lexington Ins. Co*., 19 F.Supp.3d 712 (S.D.Tex. 2014). An insured prison operator brought an action seeking declaratory judgment that an insurer had a duty under a commercial umbrella liability policy to defend it in an underlying civil rights action. The underlying case was brought by the representative of a deceased inmate who allegedly died because of the operator's policy of not giving inmates their scheduled medications. The insurer moved for partial summary judgment. The district court granted the motion. The court held that the underlying claim for refusing to provide prescribed medications fell within the scope of the policy's professional liability exclusion, despite the operator's contention that the claim addressed administrative rather than professional conduct because it was a global administrative decision to deprive inmates of that particular medical care, where the exclusion extended to "failure to provide professional services." (Lexington Insurance Company, LCS Corrections Services, Inc., Texas)

U.S. District Court
POLICIES/PROCEDURES

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. Appeals Court
INMATE FUNDS

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
BUDGET
STAFF LEVELS

Peralta v. *Dillard*, 744 F.3d 1076 (9th Cir. 2014). A state inmate brought a § 1983 action against a prison's chief dental officer, its chief medical officer, and its staff dentist, alleging deliberate indifference to his serious medical needs. The district court granted judgment as a matter of law to the chief dental officer and the chief medical officer at the close of inmate's case, and entered judgment on the jury's verdict in favor of the dentist. The inmate appealed. The appeals court affirmed. The appeals court held: (1) it is appropriate to consider the resources available to a prison official who lacks authority over budgeting decisions, overruling *Jones v. Johnson*, 781 F.2d 769, and *Snow v. McDaniel*, 681 F.3d 978; (2) evidence warranted a jury instruction on the lack of resources available to the staff dentist; (3) evidence did not establish the chief medical officer's awareness of the inmate's dental needs; and (4) evidence did not establish the chief dental officer's awareness of the inmate's dental needs. The court noted that there was evidence that budgetary constraints actually affected the state prisoner's dental treatment: (1) where the staff dentist listed "staffing shortages beyond our control" as an explanation for the waiting list for dental procedures; (2) evidence was presented that the prison had less than half the number of dentists required by law; (3) there were no dental hygienists; and (4) that dentists frequently had to work without dental assistants. The staff dentist testified that staff shortages limited the amount of time he could have spent with the prisoner during any visit and that he focused on a prisoner's most pressing complaint because he did not have enough time. (California State Prison, Los Angeles County)

U.S. District Court
RECORDS

Taha v. *Bucks County*, 9 F.Supp.3d 490 (E.D.Pa. 2014). An arrestee brought an action against a county, a county correctional facility, and companies that operated websites publishing mug shot and arrest information, alleging that the defendants published his expunged arrest record in violation of Pennsylvania's Criminal History Record Information Act (CHRIA), and that the companies violated a Pennsylvania statute prohibiting the unauthorized use of a name or likeness and committed an invasion-of-privacy tort of "false light." The company moved to dismiss. The district court granted the motion in part and denied in part. The court held that the arrestee's allegations that the company selectively published his expunged arrest record and mug shot on its website in order to falsely portray him as a criminal, and created a false impression regarding his criminal history and character, were sufficient to state a "false light" claim against the company under Pennsylvania law. (Citizens Information Associates, LLC, Bucks County Correctional Facility, Pennsylvania)

U.S. District Court
PRISONER ACCOUNTS
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. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. Appeals Court
FOIA- Freedom Of Information Act
COMMISSARY
TELEPHONE COSTS

DeBrew v. *Atwood*, 792 F.3d 118 (D.C. Cir. 2015). A federal inmate brought an action alleging that the Bureau of Prison's (BOP) response to his request for documents violated the Freedom of Information Act (FOIA), that the BOP and its officials violated the Takings and Due Process Clauses by retaining interest earned on money in inmates' deposit accounts, and that officials violated the Eighth Amendment by charging excessively high prices for items sold by the prison commissary and for telephone calls. The district court entered summary judgment in the BOP's favor and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the BOP did not violate FOIA by failing to produce recordings of the inmate's telephone conversations and that the inmate's failure to exhaust his administrative remedies precluded the court from reviewing whether the BOP conducted an adequate search. The court found that the Bureau of Prisons' (BOP) alleged practice of charging excessively high prices for items sold by prison commissary and for telephone calls did not violate Eighth Amendment. (Federal Bureau of Prisons, Washington, D.C.)

U.S. District Court
CONTRACT SERVICES
EMPLOYEE QUALIFICATIONS

Gorman v. *Rensselaer County*, 98 F.Supp.3d 498 (N.D.N.Y. 2015). An employee in a county sheriff's department brought a § 1983 action against the county, sheriff, master sergeant, and the company which provided psychological evaluations for public safety agencies. The district court dismissed the action finding that under New York law, the employee did not a state claim for negligent misrepresentation against the company, whose psychologist performed an independent medical examination of the employee in connection with his applications for benefits while on medical leave. The court also held that the company was not a state actor for the purposes of the employee's § 1983 action. The court noted that although the company was contracted by the sheriff to perform an independent medical exam of the employee, the mere fact that a private actor was paid by state funds, or was hired by a state actor, was insufficient to establish a state action, and the employee's allegations that the company conspired or acted in concert with the county were wholly conclusory. (Rensselaer County Sheriff's Office, New York)

U.S. Appeals Court
RECORDS

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
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. (Erie County Holding Center, New York)

U.S. District Court
FOIA- Freedom of Information Act

Pinson v. *U.S. Department of Justice*, 104 F.Supp.3d 30 (D.D.C. 2015). A federal prison inmate brought an action against the Department of Justice (DOJ), alleging DOJ withheld records from him in violation of the Freedom of Information Act (FOIA) and the Privacy Act. The inmate moved for sanctions, a protective order, appointment of counsel, an order to show cause, production of documents, and a preliminary injunction. The district court granted the motion in part and denied in part. The court held that the inmate would be appointed counsel for the limited purpose of reviewing correspondence withheld by the Bureau of Prisons (BOP) and determining DOJ's compliance with FOIA. The court found that sanctions for the DOJ's failure to timely comply with a court order were not warranted. The court noted that the BOP's mail policy prevented the inmate from reviewing the DOJ's FOIA responses, preventing him from properly litigating his FOIA claims. (Federal Bureau of Prisons, ADX Florence, Colorado)

U.S. District Court
FOIA- Freedom of Information Act
TELEPHONE COSTS
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. The court found that the defendants violated FOIA by failing to make a timely determination on the requester's requests for information. The court found the delays "egregious" where the requester did not receive ICE's first production of documents, or any other determination, until 361 days after mailing its first FOIA request letter, seven months after mailing its second request letter, and almost four months after filing this lawsuit, and production of the remainder of the requested documents was not completed for several additional months. The court awarded reasonable attorney fees and costs to the requester, finding that it was the prevailing party. (U.S. Department of Homeland Security, Immigration and Customs Enforcement)

U.S. District Court
FOIA- Freedom Of Information Act
RECORDS

Sanchez-Alaniz v. *Federal Bureau of Prisons*, 85 F.Supp.3d 208 (D.C.D.C. 2015). A prisoner filed suit against the Bureau of Prisons (BOP) and others under the Freedom of Information Act (FOIA). The BOP filed a motion to dismiss or in the alternative for summary judgment. The district court denied the motion. The court held that the BOP's declaration about its document search did not demonstrate beyond a material doubt that its search process was reasonably calculated to uncover all relevant documents, and the declaration did not adequately demonstrate that redacted information came within the exemption from disclosure for law enforcement records that could reasonably be expected to endanger the life or safety of an individual. The court noted that the BOP declaration provided no description of the search itself, and neither identified which files were searched, nor explained why particular files were searched, or describe how the files were searched. The court noted that the declarations were vague and conclusory, and the BOP demonstrated no causal connection between the disclosure of redacted information and a threat of harm to any employee or inmate. (Federal Bureau of Prisons, District of Columbia)

U.S. District Court
POLICIES/PROCEDURES

Sanders v. *Glanz*, 138 F.Supp.3d 1248 (N.D. Okla. 2015). A pretrial detainee's guardian filed a § 1983 action against a sheriff, the jail's private healthcare providers, and a booking nurse to recover for injuries that the detainee suffered from a severe assault by fellow prisoners. The defendants filed for dismissal. The district court granted the motions in part and denied in part. The court held that the detainee, who had been assaulted by other county jail inmates, stated a plausible municipal liability claim under § 1983 against the corporation that assisted in developing the sheriff's policies with respect to medical and mental health care of inmates, where the detainee alleged that the corporation shared responsibility with the sheriff to adequately train and supervise its employees, and that the corporation's policies, practices, and customs posed substantial risks to inmates' health and safety, but failed to take reasonable steps to alleviate those risks.

The court found that the detainee's allegations were sufficient to state a plausible claim against the sheriff in his individual capacity by alleging that the sheriff was responsible for creating and enforcing regulations, policies, practices, and customs at the county jail, and that pursuant to those practices, policies, and customs, the jail maintained a longstanding, constitutionally deficient system of medical and mental health care. According to the court, the sheriff knew of substantial risks created by that system but failed to take reasonable steps to alleviate the risks, but instead took intentional and active steps to conceal the dangerous conditions at the jail, and the sheriff disregarded known and obvious risks of severe harm from lack of adequate mental health assessment and treatment, classification, supervision, or protection. (David L. Moss Criminal Justice Center, Tulsa County Sheriff, Oklahoma, Correctional Healthcare Management, Inc. and, Correctional Healthcare Management of Oklahoma, Inc.)

U.S. District Court
STAFFING LEVELS
POLICIES/PROCEDURES

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 APA- Administrative Procedures Act	*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. 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 & Minn. ADAD Law)
U.S. Appeals Court COMMISSARY PROPERTY	*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)
U.S. Appeals Court CONTRACT SERVICES	*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 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 CONTRACT SERVICE EMPLOYEE QUALIFICATIONS	*Velez-Ramirez* v. *Puerto Rico*, 98 F.Supp.3d 388 (D.P.R. 2015). An independent contractor brought an action against the Commonwealth of Puerto Rico, the Puerto Rico Department of Corrections and Rehabilitation (DOCR), the company that managed the provision of healthcare services for DOCR, and the company's secretary, alleging that failure to renew her professional services contract violated the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Puerto Rico law. The defendants moved for summary judgment. The district court granted the motion. The court held that the plaintiff was not qualified to work as a training and professional development coordinator, and the DOCR's failure to renew the plaintiff's contract was not a pretext for retaliating against her for seeking a reasonable accommodation for her diabetic retinopathy. (Bayamón Correctional Complex, Correctional Health Services Corporation, Puerto Rico)

SECTION 3: ADMINISTRATIVE SEGREGATION

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

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

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

1969

U.S. Appeals Court
RELIGIOUS SERVICES

Sharp v. Siegler, 408 F.2d 966 (8th Cir. 1969). Segregated prisoners may be refused the opportunity to attend regular Sunday religious services. (Nebraska Penal Complex)

1970

U.S. District Court
REGULATIONS

Carothers v. Follette, 314 F.Supp. 1014 (S.D. N.Y. 1970). "Any prison regulation or practice which restricts the right of free expression that a prisoner would have enjoyed if he had not been imprisoned must be related both reasonably...and necessarily... to the advancement of some justifiable purpose of imprisonment...A prisoner could be punished only if he acted or threatened to act in a way that breached or constituted a clear and present danger of breaching the justifiable regulation." (Green Haven State Prison, New York)

U.S. District Court
ISOLATION

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

1971

U.S. District Court
PRIVILEGES

Conklin v. Hancock, 334 F.Supp. 1119 (D. N.H. 1971). Inmate in isolation should have all privileges of other inmates except those that involve mixing with the general population. Attorney for inmate in isolation must be allowed to confer privately with inmate and other inmates who may be witnesses in his behalf. Outgoing mail of security risk, except mail to public officials and attorney of record may be read to determine whether escape plans are being made. Incoming "legal" mail is to be delivered promptly and unopened. Other incoming mail may be inspected for contraband and read to extent necessary to foil escape plans or censor pornography or inflammatory writing. (New Hampshire State Prison, Concord, Hew Hampshire)

U.S. District Court
LENGTH

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Isolation may not be used for extended periods of time. (Lucas Co. Jail, Ohio)

1972

U.S. Appeals Court
DUE PROCESS

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. Appeals Court

Gray v. Creamer, 465 F.2d 179 (3rd Cir. 1972). State prison inmates instituted a civil rights action claiming that censorship of mail, confiscation of personal belongings, transfer from one section of prison to another without formal hearing, placement in solitary confinement or administrative segregation, and shutting down of a weekly news letter which was produced through cooperative efforts of "outsiders" and inmates were a violation of their constitutional rights as inmates. Although the district court dismissed

	the case, holding that the plaintiffs did not present issues for which relief could be granted, the appeals court reversed the lower court decision. (Western Penitentiary, Pittsburgh, Pennsylvania)
	1973
U.S. District Court JUVENILE	Collins v. Schoonfield, 363 F.Supp. 1152 (D. Md. 1973). Segregation of juvenile to protect him from assault is not unconstitutional. (Baltimore City Jail, Maryland)
U.S. District Court FREE SPEECH	Diamond v. Thompson, 364 F.Supp. 659 (M.D. Ala. 1973). Political discussions in an administrative segregation unit are a protected first amendment activity, subject only to time and manner restrictions. (Alabama Penal System)
U.S. District Court LENGTH HYGIENE	Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Inmates in isolation shall receive showers as frequently as other inmates. Isolation may not extend beyond fourteen days, unless voluntary or certified in writing by a medical doctor as medically necessary. (Jackson County Jail, Kansas City, Missouri)
U.S. Appeals Court	Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied, 414 U.S. 1033. Eighth amendment is applicable to solitary confinement. (Manhattan House of Detention, New York)
U.S. District Court RELIGIOUS SERVICES	Pinkston v. Bensinger, 359 F.Supp. 95 (N.D. Ill. 1973). Prisoners justifiably isolated may be denied the right to attend religious services. (Penitentiary, Joilet Branch, Illinois)
	1974
U.S. District Court HOMOSEXUALS PRIVILEGES	Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Known homosexuals may be placed nonpunitively in solitary confinement but may not be denied regular prison privileges and amenities. Mentally disturbed inmates may be placed nonpunitively in solitary confinement but may not be denied regular prison privileges and amenities. Solitary confinement is not per se cruel and unusual, but it becomes so if the inmate is denied clothing. (Mecklenburg County Jail, North Carolina)
U.S. District Court RELIGIOUS SERVICES ACCESS TO COURTS	Wilson v. Beame, 380 F.Supp. 1232 (E.D. N.Y. 1974). Inmates in administrative segregation are entitled to group religious services under the less drastic alternatives test. Inmates in administrative segregation have the right to jail house legal assistance or some other reasonable alternative, so they can exercise fundamental right of access to the courts. Inmates in administrative segregation are entitled to substantially the same rights and privileges as the general population. Inmates in administrative segregation are entitled to group religious services, under the less drastic alternatives test. Inmates in administrative segregation are entitled to education and art programs offered to the general population. (House of Detention For Men, Brooklyn, New York)
	1975
U.S. District Court RELIGIOUS SERVICES SURVEILLANCE SEARCHES	Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). Inmates in administrative segregation must be allowed to hold religious services at least once weekly, in an area other than the unfurnished narrow corridor within a few feet of the commodes of the inmates' cells, and at a time when the services do not have to compete with noise from the radio and television. Exclusion of inmates in administrative segregation from worship with all other members of their faith is not abridgement of their fundamental first amendment rights. Requirement that inmates in administrative segregation submit a request slip before receiving clothing from visitors does not violate the Constitution. 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)
U.S. Appeals Court HYGIENE FREE SPEECH ACCESS TO COURT	Kimbrough v. O'Neil, 523 F.2d 1057 (7th Cir. 1975), aff'd, 545 F.2d 1059 (7th Cir. 1976). It is unconstitutional to deprive an inmate in solitary confinement of the rudimentary implements of personal hygiene, such as toilet paper, soap, towels, and washing water. It is unconstitutional to deny an inmate in solitary confinement the right to communicate with his attorney, family and friends by mail or visits. (St. Clair County Jail, Illinois)

U.S. District Court
TELEPHONE
MAIL

Sykes v. Kreiger, 451 F.Supp. 421 (N.D. Oh. 1975). Prisoner access to telephone is ordered. Indigent inmates must be allowed to send five free letters per week. No limitations are allowed on attorney-client mail. Inmates in isolation are entitled to correspond with attorney. (Cuyahoga County Jail, Ohio)

1976

U.S. District Court
REVIEW

Tate v. Kassulke, 409 F.Supp. 651 (W.D. Ky. 1976). When inmates are placed in indefinite isolation, the decision must be reviewed every ten days by officials other than the ones who made the original decision. (Jefferson County Jail, Kentucky)

U.S. District Court
DUE PROCESS

Wright v. Enomoto, 462 F.Supp. 397 (N.D. Calif. 1976), aff'd, 434 U.S. 1052 (1977). A classification of a prisoner from the general population to administrative segregation requires procedural due process if the conditions of administrative segregation are substantially more "onerous" than those in the general population. (State Prisons, San Quentin, Folsom, Soledad, Tracy, California)

1978

U.S. Appeals Court
DUE PROCESS

Arsberry v. Seilaff, 586 F.2d 37 (7th Cir. 1978). Transfer of a prisoner to segregation does not require due process unless segregation is authorized solely because of the prisoner's misbehavior. (Illinois State Prison)

U.S. District Court
DUE PROCESS
PLACEMENT
CONDITIONS

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 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. 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. Prisoners placed in the control unit were entitled to written notice of hearing, written reason, impartial decision making, and immediate and later periodic review. Prisoners were entitled to be told what affirmative actions they could take to expedite their release from the control unit. 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
STAFF ASSIGNMENT

Finney v. Mabry, 458 F.Supp. 720 (E.D. Ark. 1978). Court orders affirmative action program of recruitment, and orders the rotation of officers assigned to administrative segregation unit. (Arkansas Department of Corrections)

U.S. District Court
DUE PROCESS

McAlister v. Robinson, 488 F.Supp. 545 (D. Conn. 1978), aff'd, 607 F.2d 1058 (2nd Cir. 1979). A transfer from general population to segregation which works a substantial deprivation on the activities of the individual and where the state regulations limit the use of segregation to post discipline or for protection, requires due process. The process may be provided after the transfer to avoid institutional problems. (Connecticut Correctional Institute, Somers)

U.S. District Court
CONDITIONS
PLACEMENT

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.

Actions of prison officials in separating newly admitted inmates and protective custody prisoners from the general prison population are subject to a basic due process requirement that such distinctions be rational rather than arbitrary or capricious, but, on record, the method of classifying inmates within this particular institution was not shown to be arbitrary or capricious.

Prisoners failed to sustain burden of proof that dormitory use of a hospital wardroom violated constitutional rights of inmates who slept therein and failed to show that use of the wardroom infringed on constitutional rights of inmates to adequate medical care. (M.C.I. Concord, Mass.)

U.S. District Court
PSYCHIATRIC CARE

Nelson v. Collins, 455 F.Supp. 727 (D. Md. 1978). Prisoners placed in isolated confinement because of aberrant behavior resulting from mental illness are entitled to prompt and adequate psychiatric assistance. (Maryland Penitentiary)

U.S. District Court
DUE PROCESS

Owen v. Heyne, 473 F.Supp. 345 (N.D. Ind. 1978), aff'd, 605 F.2d 559 (7th Cir. 1979) cert. denied, 100 S.Ct. 1054. Administrative segregation of inmates "believed instigating disorder," done in good faith and for investigative purposes, is an emergency action and does not require due process. (Indiana State Prison)

U.S. District Court
EXERCISE

Stewart v. Gates, 450 F.Supp. 583 (C.D. Calif. 1978). Prisoners in segregation are to receive two hours of exercise per week. (Orange County Central Jail, California)

1979

U.S. District Court
DUE PROCESS

Bartholomew v. Reed, 477 F.Supp. 223 (D. Ore. 1979). Administrative transfer of a prisoner to segregation requires some due process. Procedures in effect which require a post-transfer hearing were sufficient to satisfy due process and are appropriately less stringent than procedures governing disciplinary confinement. (Oregon Correctional Institute, State Penitentiary, and Women's Correctional Center)

U.S. District Court
PLACEMENT

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
PLACEMENT

Leonard v. Moran, 611 F.2d 397 (1st Cir. 1979). Classification to segregation where the inmate was taunted and threatened by other inmates does not state a claim for failure to protect under the eighth amendment, at least where the duration was only two days. (State Prison, Cranston, Rhode Island)

U.S. Appeals Court
PLACEMENT
DUE PROCESS

Raffone v. Robinson, 607 F.2d 1058 (2d Cir. 1979). In November, 1977, a black inmate was found stabbed in a laundry cart near the gymnasium at the Connecticut Correctional Institution at Somers. The plaintiff in this case, Salvatore Raffone, and five other white inmates were removed from general prison quarters and placed in segregation. One of the inmates was told that the six were being held pending the investigation of the black inmate's death. Eight days after being placed in segregation, Raffone was given a hearing with no written notice. He was not told the purpose of the hearing nor the fact that he could call witnesses on his behalf. At the hearing, he was told only that he was being held pending the outcome of the investigation into the slaying of the black inmate.

Because the officials expected Raffone's stay in the segregation to be lengthy, he was allowed some of the privileges available to prisoners in the general population, such as recreation and the use of some of his personal belongings. Two of the inmates placed in segregation were returned to the general population shortly after being placed there. Raffone and the three remaining inmates wrote a letter to a district court judge asking to be released. Hearings were held, and the officials explained that Raffone and the other inmates were being held for several reasons. First, they had been told by the state police, who were investigating the murder, that Raffone and the others were prime suspects. Second, they feared that because of the racial overtones of the murder, Raffone and the other inmates might be hurt once it was learned by inmates in the general population that the four inmates in segregation were prime suspects.

The officials testified at length as to objective observations they had made which implied that racial unrest had increased in the prison population. The district judge ruled that Raffone's rights had been violated; however, since the violation was not intentional and since his rights had not been clearly established, there would be no finding of liability on the part of the officials. Raffone appealed the court's order, but the U.S. Second Circuit Court of Appeals affirmed. The Appellate Court dismissed the case law and noted that there was some confusion in the area because of rather close cases decided by the U.S. Supreme Court. The court stated: "Thus, at the time Raffone was removed to administrative segregation, the Supreme Court case law indicated that transfers did not necessarily require procedural due process even if they substantially deprived a prisoner of privileges.

The court also commented that since the officials had been able to demonstrate their good faith and did not act maliciously in segregating Raffone, they would be immune from an award of money damages. (Correctional Institution, Somers)

U.S. District Court
LAW LIBRARY
CONDITIONS
WORK
PRIVILEGES

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. However, the inmate must be able to receive books or copies of the books. Legible copies must arrive within forty-eight hours of request. If the individual is not considered violent or a danger to others, there is no reason to deny him a chair in his cell. If he is able to work, he should receive pay for work or idle pay when no work is available. The right of an inmate to be protected against attacks upon him by other inmates cannot be conditioned upon the inmate's waiver of the privileges normally provided inmates. (State Correctional Institution, Graterford, Pennsylvania)

1980

U.S. Appeals Court
DUE PROCESS

Bills v. Henderson, 631 F.2d 1287 (6th Cir. 1980). While the mere change of status from general population to administrative segregation does not implicate a protected liberty interest, the state regulations defining the use of administrative segregation and limiting it to individuals who create safety problems were they to remain in the general population does create a protected liberty interest. Because the decision here is made on the entire record of the inmate rather than the most recent incident, the notice of intent to change status, which due process requires, must indicate not merely the most recent incident, but the entire basis for the decision. A Wolff type hearing is to be conducted. Further, the statement of the basis for the general decision must go beyond the most recent event and review the general record and make findings thereon. (Brushy Mountain State Penitentiary, Tennessee)

U.S. District Court
PLACEMENT
DUE PROCESS

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
LENGTH

Chapman v. Pickett, 491 F.Supp. 967 (C.D. Ill. 1980). The district court determined that the length of confinement does not have any effect on the question whether confinement in segregation violates the eighth amendment; reversed on appeal. (Federal Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
DUE PROCESS

Cummings v. Roberts, 628 F.2d 1065 (8th Cir. 1980). The transfer of an inmate to segregation for nonpunitive reasons does not require procedural due process. (St. Louis City Jail)

U.S. Supreme Court
DUE PROCESS

Hughes v. Rowe, 449 U.S. 5 (1980). The petitioner, a state prisoner who was placed in a segregation cell for a violation of prison regulations, was given a hearing two days later, and, after admitting the violation, was sentenced to 10 days segregation. After exhausting administrative remedies, the petitioner brought a federal-court civil rights action against Illinois corrections officers under 42 U.S.C. Section 1983.

Held. Segregation without a prior hearing may violate due process if the postponement of procedural protections is not justified by emergency conditions. Here, the record did not show that the petitioner's immediate segregation was necessitated by emergency conditions. An administrative regulation authorizing segregation pending investigation of disciplinary matters did not justify dismissal of the suit in the absence of any showing that concern for institutional security and safety was the basis for petitioner's immediate segregation without a prior hearing. Certiorari granted; affirmed in part, reversed in part, and remanded. (Illinois State Penitentiary)

U.S. Appeals Court
DUE PROCESS

Jordan v. Jones, 625 F.2d 750 (6th Cir. 1980). Three days restriction to a cell does not implicate a protected liberty interest and, therefore, procedural due process is not required for such a restriction. (State Prison of Southern Michigan)

U.S. District Court
PLACEMENT

Maxton v. Johnson, 488 F.Supp. 1030 (D. S.C. 1980). The placement of an individual in segregation without a hearing to "cool off" after a small disturbance, without the filing of any institutional disciplinary charges and without conformity to any of the state statutes is not unconstitutional. (Maximum Security Center, South Carolina)

U.S. Appeals Court
PLACEMENT
CONDITIONS
PSYCHIATRIC CARE

McCray v. Burrell, 622 F.2d 705 (4th Cir. 1980), cert. denied, 449 U.S. 997 (1980), cert. denied, 449 U.S. 1003, 101 S.Ct. 537. Regulations permitting the placement of an individual in an isolation cell and stripping him where he was dangerous to himself because of an apparent mental illness, are valid. However, where the guard failed to comply with the regulation and did not notify the psychiatrist of such placement because the guard did not believe that the individual was a danger to himself, the placement is unconstitutional. (Maryland State Penitentiary)

U.S. Appeals Court
PLACEMENT

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. District Court
LENGTH
DUE PROCESS

United States ex rel. Smith v. Robinson, 495 F.Supp. 696 (E.D. Penn. 1980). State disciplinary regulation which requires that all discipline be proven by a preponderance of the evidence creates a protected liberty interest in having that regulation followed. A misconduct report does not itself constitute evidence and, when weighed against witnesses who explain the alleged violation in a manner suggesting that there was no violation in fact, it does not constitute a preponderance of the evidence so as to form a basis for a disciplinary decision. The state regulation indicating that segregation would only be used when necessary and for as short a time as possible creates a liberty interest violated by a two month placement in segregation. (Correctional Institution, Graterford, Pennsylvania)

1981

U.S. District Court
CONDITIONS
LENGTH
HYGIENE

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

U.S. District Court
PLACEMENT

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

1982

U.S. District Court
PLACEMENT

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)

1983

U.S. Appeals Court
PLACEMENT
DUE PROCESS

Drayton v. Robinson, 719 F.2d 1214 (3rd Cir. 1983). Appeals court orders the same protections for pretrial detainees as provided to sentenced offenders. Pennsylvania prison officials housed pretrial detainees, at the request of local officials, in state facilities with convicted offenders. At times, detainees were placed in administrative segregation without applying the same policies and procedures used for convicted offenders prior to placement.

The Third Circuit Court of Appeals disagreed with this practice, stating that "...to accept appellants' interpretation of the regulations would create an anomalous situation where inmates who were charged, tried, convicted and sentenced would have greater constitutional protection from segregated confinement than inmates who are merely being held awaiting trial, or convicted but unsentenced."

The court ruled that detainees had as much of a protectable interest in remaining out of administrative segregation as all other inmates at the facility and were entitled to the same protections. (Pennsylvania Bureau of Corrections)

U.S. Supreme Court
PLACEMENT
DUE PROCESS

Hewitt v. Helms, 103 S.Ct. 864 (1983). U.S. Supreme Court upholds the process for placing an inmate in administrative segregation. The Supreme Court has upheld the process by which an inmate may be transferred from the general prison population and placed in administrative segregation; the decision does not involve the prison disciplinary process or disciplinary segregation.

Pennsylvania regulations permitted correctional officials to impose administrative segregation when an inmate posed a threat to security, when disciplinary charges are pending against an inmate, or when an inmate requires protection. After a prison disturbance, plaintiff inmate Helms was interviewed and placed in administrative segregation. Later a committee met and reviewed the status of all individuals confined in administrative segregation and recommended that Helms remain in administrative segregation because he was a "danger to staff and to other inmates if released back into general population."

The superintendent of the institution approved the committee recommendation upon review. Helms was held in administrative segregation until three weeks later; then, a disciplinary committee held a hearing on the disciplinary charges against him, found him guilty and confined him to disciplinary segregation for six months.

The issue before the supreme court was the propriety of administrative segregation imposed up to the time of his disciplinary hearing. The Court of Appeals had found that Helms had a protected liberty interest in continuing to live in the general population which could not be taken away from him without a full hearing similar to that given in disciplinary segregation cases.

This holding was reversed by the supreme court, which held that while Pennsylvania's framework did give rise to a liberty interest, and that administrative segregation did add to the restraints normally imposed on one's freedom, the same kind of formal hearing was not necessary. The issue of what "due process" an inmate is entitled to was addressed by the supreme court: "...petitioners were obligated to engage only in an informal nonadversary review of the information supporting respondent's administrative confinement, including whatever statement respondent wished to submit, within a reasonable time after confining him to administrative segregation."

The court also observed that the safety of the institution's guards and inmates is perhaps the most fundamental responsibility of a prison administration. In holding that the procedure (informal review) satisfied the due process clause of the constitution for continuing confinement of Helms in administrative segregation pending the outcome of investigations, the court stated: We think an informal, nonadversary evidentiary review sufficient both for the decision that an inmate represents a security threat and the decision to confine an inmate to administrative segregation pending completion of an investigation into misconduct charges against him. An inmate must merely receive some notice... and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation. Ordinarily a written statement by the inmate will accomplish this purpose--although prison administrators may find it more useful to permit oral presentations in cases where they believe a written statement would be ineffective. So long as this occurs, and the decision-maker reviews the charges and then-available evidence against the prisoner, the due process clause is satisfied. (Pennsylvania State Prison)

U.S. Appeals Court
FREE SPEECH

Jackson v. Meachum, 699 F.2d 578 (1st Cir. 1983). Segregated inmates are not entitled to communicate with other inmates. The First Circuit Court of Appeals has agreed with many jurisdictions that providing an inmate in segregation confinement with satisfactory conditions, but with virtually no communication or association with fellow inmates does not constitute cruel and unusual treatment.

The suit was brought by an inmate who was placed in the most secure housing unit of a state hospital for being suicidal, disruptive, and violent. The plaintiff alleged that denial of any contact with other prisoners was cruel and unusual punishment and violated the Eighth Amendment.

The factor of psychiatric deterioration brought on by the condition of confinement had been addressed by the Fifth Circuit, in Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977):

> The mental, physical, and emotional status of individuals, whether in or out of custody, do (sic) deteriorate and there is no power on earth to prevent it...We decline to enter this uncharted bog. If the

> state furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under amendment eight.

On this basis the appellate court reversed the district court's decision to provide the inmate with several hours a day of interaction with other inmates and stated:

> We do not suggest that the district court's prescription of several hours of inmate contact a day is a mere 'amenity,' to use the language of Newman. It might very well be helpful therapy. But to accept plaintiff's proposition that there is a constitutional right to preventive therapy where psychological deterioration threatens, notwithstanding that the physical conditions of confinement clearly meet or exceed minimal standards, would make the eighth amendment a guarantor of a prison inmate's prior mental health. Such a view, however civilized, would go measurably beyond what today would generally be deemed 'cruel and unusual.'

The court stated that a prison could not be responsible for the inmates' feelings of depression or hopelessness that may be inevitable by-products of incarceration. (Bridgewater State Hospital, Massachusetts)

1985

U.S. District Court
ACCESS TO COURTS
LAW LIBRARY

Walters v. Thompson, 615 F.Supp. 330 (U.S.D.C. Ill. 1985). A federal district court in Illinois found the state's program for legal assistance to segregated inmates to be inadequate. Primarily, the inmates must rely totally on inmate clerks who have little or no legal experience, formalized training, or supervision by attorneys. The clerks are supervised and paid by the corrections department. It is alleged that the inmate clerks are pressured into limiting the number of claims filed against the prison. When the inmates request legal materials, the clerks cannot obtain the actual books, but must photocopy the material. To worsen the matter, inmates are entitled to only 300 pages of photocopied material a year. Access to the inmate clerks is occasional, telephonic access to outside counsel is limited or nonexistent, and there is not contact with any trained legal personnel. Although the court determined these aspects to be constitutionally deficient, it refused to grant a preliminary injunction on the claims at this point, since the record didn't reveal how all maximum security state institutions were denying inmates meaningful access to the courts. (Menard Correctional Center and the Joliet Correctional Center, Illinois)

1986

U.S. District Court
ACCESS TO COURTS
PLACEMENT
PRIVILEGES

Jeffries v. Reed, 631 F.Supp. 1212 (E.D. Wash. 1986). A death row inmate challenged the constitutionality of his transfer to the intensive management unit of the prison and also challenged the conditions of his incarceration in that unit. On cross motions for summary judgment, the district court held that: (1) the transfer of an inmate to a unit on the grounds that he inherently imposed a security risk in light of his sentence did not deny the inmate due process; (2) inspection of the inmate's legal mail by staff of the unit did not violate the inmate's rights of free speech or equal protection; (3) digital rectal search which the inmate underwent prior to being transferred to the unit and strip and visual body-cavity searches he underwent each time he left his cell did not constitute unreasonable searches and seizures; (4) denial of contact with other inmates did not violate the first, sixth, or fourteenth amendments; and (5) the telephone schedule, permitting the inmate to place a collect call to his attorney at least three times per week between the hours of 8:00 a.m. and 4:00 p.m. did not deny the inmate adequate access to counsel and the courts. (Intensive Management Unit, State Prison, Washington)

U.S. Appeals Court
MAIL
RELIGIOUS SERVICES
ACCESS TO COURTS

Little v. Norris, 787 F.2d 1241 (8th Cir. 1986). An inmate of a maximum security unit brought civil rights complaints challenging the constitutionality of prison policies which restricted his mail privileges, his right to attend group religious services and his right to receive legal assistance from another inmate. The United States District Court entered summary judgment dismissing the complaints, and the inmate appealed. The court of appeals held that: (1) the prison policy denying the inmate a right to receive or send personal correspondence during thirty days in punitive isolation did not violate the inmate's constitutional rights; (2) suspension of the inmate's right to attend group religious services did not violate the inmate's first amendment right to freedom of religion; and (3) forbidding the inmate in administrative segregation or punitive housing to receive assistance from another inmate in preparation of a legal draft did not violate the inmate's constitutional rights. A prison policy which prohibited an inmate from possessing loose postage stamps did not violate the inmate's constitutional rights, where the policy was enacted in order to eliminate exchange of contraband among inmates, and the inmates were allowed to purchase envelopes with postage

stamps embossed on them at the commissary. The fact that while the inmate was in punitive isolation, the inmate was denied the right to receive or send personal correspondence but was entitled to receive legal and media mail, did not deny the inmate's constitutional rights, where the purpose of withholding personal mail was to make punitive isolation unpleasant, and thereby discourage improper behavior and promote security within the prison, and such sanction was only imposed for thirty days. The inmate's exercise of freedom of religion may be restricted by reasonable requirements of prison security. Once prison officials produce evidence that the restriction placed on an inmate's religious freedom was in response to a security concern, the burden is on the inmate to show by substantial evidence that the prison officials' response was exaggerated. (Tucker Maximum Security Unit, Arkansas Department of Corrections)

U.S. District Court
PLACEMENT
CONDITIONS
DUE PROCESS
ACCESS TO COURTS

Powell v. Department of Corrections, State of Okl., 647 F.Supp. 968 (N.D. Okl. 1986). A state prisoner who had tested positive for the AIDS virus brought a Section 1983 action against the Oklahoma Department of Corrections alleging violation of his constitutional rights in his segregation from the general prison population. The prisoner also sought writ of mandamus raising similar issues. The district court held that: (1) conditions of the prisoner's confinement were not violative of his constitutional rights; (2) the prisoner was not denied his right to worship; (3) the prisoner was not denied equal protection of law; and (4) the prisoner was not denied his constitutional right of access to courts.

A prisoner does not have a federal constitutional right to be placed in the general prison population. The conditions of a prisoner's confinement after he tested positive for the AIDS virus, in which the prisoner was segregated from the general prison population but provided limited access to all prison programs and services and allowed to exercise, were not violative of the prisoner's constitutional rights.

The prisoner was not denied his right to worship by being prohibited from attending group worship services where prohibition was intended for the health of the prisoners and to protect the prisoner from threatened harm, and where the prisoner had regular access to the prison chaplain. (Department of Corrections, Oklahoma)

U.S. Appeals Court
PLACEMENT
DUE PROCESS
REVIEW
FREE SPEECH

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)

U.S. Appeals Court
DUE PROCESS
CONDITIONS

Villante v. Dept. of Corrections of City of New York, 786 F.2d 516 (2nd Cir. 1986). A former inmate said another inmate forcibly sodomized him repeatedly while in protective custody. When he asked a corrections officer to lock his cell to prevent the attacks, the officer "only laughed and opened the cell door." He said he was also forced to hide the attacker's weapons and alleged a series of sexual assaults and threats by several inmates. He claimed that several inmates saw him dragged from the prison dayroom to the cell and witnessed the acts of sodomy as well. He lodged a formal complaint with a deputy warden. When the assaulting inmate was transferred, the attacks stopped.

The court of appeals ruled it was an error for the lower court not to order depositions of any of the officials or guards in the discovery process, and ordered them deposed for further proceedings for a determination of whether they knew or should have known of the impending assaults. Prison officials were not liable for finding the inmate guilty of hiding the weapons because they afforded him due process in reaching that conclusion. It was rational for them to think the inmate had chosen to conceal the contraband to protect himself from future attacks. (Mens Queens House of Detention, New York)

1987

U.S. Appeals Court
DUE PROCESS

Bolden v. Alston, 810 F.2d 353 (2nd Cir. 1987), cert. denied, 108 S.Ct. 229. A prisoner alleged that his right to due process was violated when the same officer acted as both investigative officer and hearing officer at the prisoner's disciplinary proceeding. The appeals court ruled that the level of procedural protection due a prison inmate involved in disciplinary proceedings differs according to the purpose of confinement. Because

the prisoner was confined pending disposition of a misconduct charge, his confinement following adjustment committee proceeding needed only to satisfy a lesser due process standard set out in **Helms**--that is, some notice of charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation. (Lincoln Correctional Facility)

U.S. Appeals Court
PLACEMENT
DUE PROCESS

Cato v. Rushen, 824 F.2d 703 (9th Cir. 1987). An inmate who was subjected to administrative segregation brought a civil rights action against prison officials. He was segregated because of his alleged involvement in an escape plot. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court disagreed, holding that evidence was insufficient to support deprivation of inmate's liberty interest because it consisted only of uncorroborated hearsay statements by an informant. The case was remanded for trial. (San Quentin State Prison, California)

U.S. Appeals Court
ACCESS TO COURTS
PLACEMENT

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: (1) the prisoner was not denied his right of access to the courts, even though the court did not act to provide counsel or to check into prison policies that were alleged to be impeding his access to legal materials; and (2) summary judgment was precluded because a material issue of fact existed as to whether the prisoner was deprived of constitutionally protected liberty of interest by failure of the warden to transfer him from administrative segregation to another institution once he had been cleared of allegations which supported his initial placement in administrative segregation. (Fort Pillow State Prison)

U.S. District Court
WORK

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. District Court
CONDITIONS
EXERCISE
HYGIENE

Davenport v. DeRobertis, 653 F.Supp. 649 (N.D. Ill. 1987), cert. denied, 488 U.S. 908. Inmates brought a class action on behalf of all present and future inmates at the maximum security prison confined to segregation for ninety or more consecutive days, alleging deprivation of their constitutional rights, against present and former wardens of the prison and the director of the Illinois Department of Corrections and seeking injunctive relief. The district court held that: (1) evidence supported the jury's finding of cruel and unusual punishment; (2) the award of nominal damages was proper; (3) the defendants were entitled to qualified immunity from compensatory or punitive damages as sued in their individual capacities; and (4) the inmates confined in segregation in maximum security prison for a period of ninety or more consecutive days were entitled to injunctive relief ordering that they be allowed, except during temporary emergencies and lockdowns, three showers per week and five hours of out-of-cell exercise per week.

Testimony was given that the general practice in maximum security prisons in civilized countries is to permit all inmates five to seven hours of exercise per week, so that permitting segregation inmates only one hour of out-of-cell exercise and one shower per week is "medically unacceptable." Inmates testified that prolonged idleness and isolation can cause mental illness and physical deterioration, and that inmates confined to segregation had experienced skin disorders, head and back pains, and musculo skeletal problems they had not had before segregation, which problems improved when they were released from segregation, supported the finding that permitting inmates confined to segregation in a maximum security prison only one shower per week and only one hour of out-of-cell exercise per week, constituted cruel and unusual punishment. (Stateville Correctional Center, Illinois)

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 discriminatory 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 DOC)

U.S. District Court
DUE PROCESS
CONDITIONS

Manley v. Bronson, 657 F.Supp. 832 (D.Conn. 1987). According to a federal court, a prisoner's due process rights were not violated when he was placed in deadlock after prison officials received information that the prisoner was involved in a stabbing incident in the prisoner's housing unit. The prisoner was only afforded verbal notice, rather than written notice. When the prisoner was subsequently transferred to administrative segregation he was given written notice of a classification committee hearing to determine whether he should be removed to administrative segregation for his personal safety and safety and security of the prison. Further, he was present at hearing with staff advocate, he received notification of the committee's decision to classify him for administrative segregation, was informed of the process and procedures for review of his classification, and while in administrative segregation, had his status reviewed on a regular basis. The court also ruled that being confined to a cell for 23 hours a day, receiving only one hour of recreation a day, restrictions placed on his religious services and his being removed from his job as the institution's barber did not constitute cruel and unusual punishment in violation of the Eighth Amendment. (Connecticut Correctional Institution at Somer)

U.S. Appeals Court
LENGTH
REVIEW
DUE PROCESS

Sheley v. Dugger, 824 F.2d 1551 (11th Cir. 1987). A federal court has found that confinement in "close management" for a period of more than 11 years without meaningful reviews is cruel and unusual punishment. A prisoner, was placed in close management (CM) administrative confinement in 1975 as an escape risk, remaining there for over ten years. According to the court, even though his status had been reviewed periodically over the years, continuous placement in CM violated due process procedures and resulted in cruel and unusual punishment because the periodic reviews were inadequate (many were conducted without the prisoner being present and with no notice or opportunity to present arguments, even though the classification team had consistently recommended that he be placed in the general population because of his good behavior). The court found that the State's procedures offered no guidance as to how the prisoner could ever reenter general population and had the effect of keeping him in CM until his prison term expired. (Florida State Prison)

U.S. District Court
DUE PROCESS
PLACEMENT

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)

U.S. Appeals Court
CONDITIONS
LENGTH
DUE PROCESS
PLACEMENT

Stephany v. Wagner, 835 F.2d 497 (3rd Cir. 1987), cert. denied, 108 S.Ct. 2851. An inmate filed this civil rights action alleging that his due process rights were violated by his two month confinement in administrative segregation. The court found that the prison rules regarding administrative segregation do not give rise to a constitutionally protected liberty interest in remaining in the general prison population. The rules required only that, in situations warranting administrative segregation, that shift commander was to report to the warden or to the assistant warden or to use his own discretion. There was no time limitation on segregation, and rules stated restrictions would be modified as warranted. (Berks County Prison, Penn.)

U.S. Appeals Court
CONDITIONS
DUE PROCESS

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 post transfer 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)

1988

U. S. District Court
PLACEMENT

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)

State Appeals Court
LENGTH
PLACEMENT

Hedin v. OSP, 760 P.2d 901 (Or.App. 1988). A prisoner was placed in administrative segregation for one year pursuant to an order of the Corrections Division, and the prisoner sought judicial review. The state appeals court, affirming the decision, found that an administrative rule authorized the involuntary administrative segregation of a prisoner for one year for a prisoner who represented "an active and extreme threat to others within the prison population." The court noted that a state administrative rule provides that an inmate may be involuntarily segregated if he "constitute[s] an immediate and continuing threat to the safety and security of the institution, its staff, visitors and other inmates." It also rejected the inmate's argument that the action was taken on the basis of uncorroborated allegations of unnamed informants, since the record contained corroboration of the information. (Oregon State Penitentiary)

U.S. District Court
LAW LIBRARY

COURT

Reutcke v. Dahm, 707 F.Supp. 1121 (D.Neb. 1988). A prisoner sued prison officials alleging that the prison's policy regarding access to legal materials denied the ~~ACCESS~~ TO his right to access to the courts. Following an evidentiary hearing and report and recommendation by a U.S. Magistrate, the district court adopted the report and recommendation, and found that the prison's policy regarding access to legal materials denied the prisoner his right to access to the courts. The warden was not entitled to qualified good faith immunity. The prisoner was entitled only to nominal damages; he was not entitled to punitive damages. The prisoner who was denied physical access to the prison law library during the time he was in protective custody was denied his right of access to courts by the prison warden, even though the prisoner was given access to "legal aides," insofar as the aides were not trained in the law. (Diagnostic and Evaluation Center, Nebraska Department of Corrections)

U.S. District Court
RELIGIOUS
SERVICES

Termunde v. Cook, 684 F.Supp. 255 (D. Utah 1988). Prison officials' right to assess the security requirements of their facility and tailor their programs and policies to meet those requirements was sufficient rationale to support denial of an inmate's request for injunctive relief prohibiting prison officials from restricting inmate attendance at religious services. A ban on religious services in special administrative segregation unit of prison did not violate the free exercise clause; legitimate security interests and specific problems of transportation and equal treatment among inmates dictated curtailment of group services. (Utah State Prison)

U.S. Appeals Court
LENGTH
DUE PROCESS

Williams v. Armontrout, 852 F.2d 377 (8th Cir. 1988), cert. denied, 109 S.Ct. 564. An inmate filed a pro se complaint, alleging that his due process rights were violated when he was not returned to the general prison population after confinement in administrative segregation. A federal appeals court held that prison regulations governing procedures to be used in determining whether to reclassify prisoner did not create a liberty interest. Department of Corrections regulations governing procedures to be used in determining whether prisoner placed in administrative segregation should be returned to general prison population did not create constitutionally protected liberty interest; regulations did not contain any substantive criteria to be used in deciding whether to reclassify prisoner, but merely established procedures to be utilized. (Missouri State Penitentiary)

U.S. Appeals Court
LENGTH

Abernathy v. Perry, 869 F.2d 1146 (8th Cir. 1989). A prisoner brought a Section 1983 suit claiming his due process rights were violated when he was placed on investigative status for 35 days. The U.S. District Court dismissed the action and the prisoner appealed. The Court of Appeals held that, although the prison policy gave the prisoner a liberty interest in remaining in the general population, his due process rights were not violated when he apparently failed to receive some of the five-day extension notices necessary to extend his restrictive confinement to 35 days, affirming the lower court decision. (Tucker Maximum Security Unit, Dept. of Corr., Arkansas)

U.S. Appeals Court
TELEPHONE
REGULATIONS

Benzel v. Grammer, 869 F.2d 1105 (8th Cir. 1989), cert. denied, 110 S.Ct. 244. A prisoner has no right to unlimited telephone use. The appeals court, reversing and remanding the lower court's decision, found that a telephone policy which prevented inmates in segregated units from calling non-attorney, non-relative males, did not violate the first amendment or equal protection rights of an inmate in administrative segregation. Even though restrictions did not apply to inmates in the general population of the penitentiary, internal security and rehabilitation concerns justified the policy. The prison policy limited inmates to two calls per week, in addition to unlimited legal or religious calls. Inmates had to submit a list of three names. Inmates could not call anyone not on the list, and the list could only include two family members and one female nonfamily member. (Nebraska State Penitentiary)

U.S. Appeals Court
REVIEW

Brown v. Frey, 889 F.2d 159 (8th Cir. 1989), cert. denied, 110 S.Ct. 1156. An inmate brought a civil rights action against prison officials, alleging that they deprived him of constitutional rights in connection with various disciplinary charges. The U.S. District Court entered judgment in favor of the inmate on some of his claims and appeal was taken. The appeals court found that the inmate did not have a constitutional right to a hearing within three working days following his administrative confinement for disciplinary violations. (Missouri Eastern Correctional Center)

U.S. District Court
DUE PROCESS

Eggleton v. Gluch, 717 F.Supp. 1230 (E.D. Mich. 1989). An inmate brought an action against the prison warden, the chief correctional supervisor, and the unit manager to recover for violations of due process and the eighth amendment in connection with continuing administrative detention. The defendants moved for a summary judgment. The U.S. District Court found that the warden, supervisor, and manager were entitled to qualified immunity from liability for the continued administrative detention of the inmate during a F.B.I. investigation after a disciplinary committee considered an attempted escape charge to be unfounded. According to the court, the warden, chief correctional supervisor, and unit manager were objectively reasonable when they continued administrative detention of the inmate and failed to solicit input in a review process during a F.B.I.'s continuing investigation of the inmate's alleged involvement in an escape plan, and, therefore, they were entitled to qualified immunity from liability for the alleged violation of due process, even though the inmate remained in detention after the prison committee found the escape charge to be unfounded and even though he faced a subsequent charge of conspiring to escape and was transferred to another prison. The F.B.I.'s continuing investigation justified the refusal to release the inmate from administrative detention and the failure to solicit the inmate's input in the review process, even though memorandum giving reasons for the detention cited a regulation that permitted the detention pending the investigation of a violation of Bureau regulations, rather than the regulation that permitted detention during an investigation or trial for a criminal act. (Federal Correctional Facility, Milan, Michigan)

U.S. Appeals Court
RELIGIOUS
SERVICES

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
DUE PROCESS
REVIEW

Gittens v. Lefevre, 891 F.2d 38 (2nd Cir. 1989). An inmate brought a civil rights action against prison officials, alleging that the officials denied him an opportunity to make a statement challenging his administrative "keeplock" until the disciplinary hearing. The U.S. District Court dismissed the complaint, and the inmate appealed. The appeals court found that prison regulations governing administrative "keeplock" did not meet minimal due process standards, but the prison officials' reliance on those regulations in prohibiting the inmate from making a statement was reasonable, entitling the officials to qualified immunity in the inmate's civil rights action. According to the court, the state prison officials have a broad administrative and discretionary authority to

remove the inmate from the general prison population for the purpose of ensuring the safety and security of the prison. Pending an investigation into an alleged disciplinary violation, such confinement is considered administrative and is not restricted by the fourteenth amendment, unless state law has created a liberty interest in remaining free from the restraints imposed. (Clinton Correctional Facility, New York)

U.S. District Court
PLACEMENT
DUE PROCESS

Hatori v. Haga, 751 F.Supp. 1401 (D. Hawaii 1989). A prisoner sued state prison officials under Section 1983 alleging that his placement in administrative segregation without notice or a hearing violated his procedural due process rights. A magistrate recommended that the defendant's motion for summary judgment be granted. The district court found that the administrative segregation of the prisoner implicated a liberty interest entitled to due process protection. It was also found that the state prison officials were stripped of official or representative character by their actions in placing the prisoner in administrative segregation without notice or a hearing in violation of the prisoner's procedural due process rights, and thus, the prisoner's Section 1983 suit against the state prison officials was against the officials in their individual capacities and was not barred by the Eleventh Amendment and doctrine of sovereign immunity. But because the question of whether administrative segregation of prisoners inheres due process rights was not settled in Hawaii at the time that the prisoner's due process rights were violated by the state prison officials, the state prison officials were individuals entitled to limited immunity from the Section 1983 suit. (Oahu Community Correctional Center, Hawaii)

U.S. District Court
CONDITIONS
SEPARATION

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." (Occoquan Facility, Lorton Corr. Complex)

U.S. District Court
DUE PROCESS
REVIEW

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
PLACEMENT
DUE PROCESS

Sanders v. Borgert, 711 F.Supp. 889 (E.D.Mich. 1989), cert. denied, 110 S.Ct. 2182. A state prison inmate brought a Section 1983 action against various prison officials. On the defendants' motion to dismiss, the district court granted the motion, and found that the inmate received adequate notice of misconduct charges and hearings on those

charges. The inmate committed a major misconduct by disobeying direct orders and by being out of place, under Michigan rules that were in effect at the time of the misconduct. The inmate, who had received three major misconduct convictions within 90 days, was not entitled to a separate hearing on whether administrative segregation or good-time forfeiture should occur, in that the state prison policy which defined the inmate's liberty interest in not being administratively segregated, specifically allowed segregation upon a finding of a major misconduct. (Huron Valley Men's Facility, Ypsilanti, Michigan)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST
PLACEMENT

Stringfellow v. Perry, 869 F.2d 1140 (8th Cir. 1989). An inmate brought a Section 1983 action against prison officials. The U.S. District Court dismissed, and the inmate appealed. The appeals court, affirming the lower court decision, found that the inmate's due process rights were not violated when he was placed in administrative segregation on investigative status for 35 days. The requirements of the prison memorandum giving the inmate liberty interest in remaining in the general population were substantially followed in placing the inmate in segregation as a result of information received by a corrections officer that the inmate was involved in an extortion-type racket and had threatened to kill another inmate. The trial court did not abuse its discretion in refusing to compel compliance with the inmate's discovery requests. Conditions of the inmate's confinement did not rise to the level of an eighth amendment violation, notwithstanding that conditions of confinement were more stringent than those afforded to the general prison population, particularly with respect to confinement in a cell and close supervision for other activities. (Tucker Maximum Security Unit, Arkansas Department of Corrections)

U.S. Appeals Court
ASSIGNMENT
PLACEMENT
REVIEW
LENGTH

Toussaint v. Rowland, 711 F.Supp. 536 (N.D. Cal. 1989), modified, 926 F.2d 800 (9th Cir. 1990). Inmates and prison officials appealed from an order of the U.S. District Court which granted the permanent placement of prisoners in administrative segregation. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. On remand and on review of the monitor's third special report, the district court found that the court would not extend its continuing jurisdiction from one to two and a half years. The review of indeterminate segregation decisions was required every 90 days. Certain procedures for placing inmates in indeterminate segregation were required; and the prison could not rely on polygraph examinations regarding gang affiliations as a basis for assigning prisoners to segregation. (California)

U.S. District Court
EQUAL PROTECTION
DUE PROCESS
PLACEMENT
REVIEW

Vallina v. Meese, 704 F.Supp. 769 (E.D.Mich. 1989). A Cuban inmate filed a suit, claiming that his removal from the general prison population into administrative protection violated his equal protection and due process rights. On a motion for summary judgment, the district court found that the warden had a rational reason for reclassifying those Cuban inmates who were facing possible deportation, based on the warden's knowledge of riots at other federal correctional facilities, and the inmate's procedural due process rights were not violated. The inmate had been given memorandum informing him that he was being reclassified, pending a possible transfer. The inmate's mental and physical well-being were reviewed within three days of his placement in administrative detention. The inmate's file was reviewed and he was released thereafter, and the inmate's detention was not based solely on his status as a Cuban, but on the fact that Cuban prisoners facing possible deportation were rioting at other federal facilities. (Milan Federal Correctional Institution, Milan, Michigan)

U.S. District Court
ACCESS TO COURT
LAW LIBRARY
PROTECTIVE CUSTODY

Watson v. Norris, 729 F.Supp. 581 (M.D.Tenn. 1989). On the parties' objections to the report and recommendation of a U.S. Magistrate, denying summary judgment motions in a prisoner's civil rights action, the district court found that the Tennessee correctional institution deprived inmates in protective segregation of their constitutionally guaranteed right of access to courts by unreasonably limiting their access to prison law library materials and legal assistance. Though the inmates in segregation could be prohibited from physically attending the law library, they had to be given advance knowledge of what books and materials were available and relevant to their research, and the decision as to whether to respond to calls for assistance from the segregation unit rested in the sole discretion of "jailhouse lawyers." The court also found that the warden and other prison officials were entitled to a defense of qualified immunity; although the institution's arrangement for providing access to the prison law library materials and legal assistance was insufficient, there was no body of authority such that any reasonable officer should have known in advance that arrangement was unconstitutional. (Turney Industrial Center and Farm, Tennessee)

U.S. Appeals Court
DUE PROCESS
PLACEMENT

Woodson v. Lack, 865 F.2d 107 (6th Cir. 1989). A Tennessee prisoner filed a habeas corpus action complaining that he was removed from the general prison population and placed in solitary confinement without due process. The U.S. District Court found for the prisoner, and the state appealed. The appeals court, affirming the decision, found that the transfer of the prisoner to administrative segregation was a punishment for a specific rule infraction, rather than a general security

measure, and thus entitled the prisoner to notice, a hearing, deliberative decision, and a general statement of reasons. The finding that the prisoner's placement in administrative segregation was based on his alleged participation in a prison riot, a serious rule infraction, rather than general security considerations, was supported by sufficient evidence. According to the court, when placement in segregation is for punishment of a rules infraction, then the full due process required by Wolff v. McDonnell is required, but when placement is in "non punitive segregation to safeguard the institutional security or to conduct an investigation of unresolved misconduct charges, then the much more informal procedural safeguards of Hewitt v. Helms are all that is required." (Tennessee Department of Corrections)

1990

U.S. District Court
PLACEMENT

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
ACCESS TO COURTS

Bumgarner v. Lockhart, 920 F.2d 510 (8th Cir. 1990), cert. den., 111 S.Ct. 2898. A state inmate filed a habeas corpus petition. The U.S. District Court denied relief, and the inmate appealed. The court of appeals found that the inmate's solitary confinement for a few days prior to trial did not interfere with his ability to prepare for trial or to obtain an attorney, as prior to trial he never attempted to notify the trial court, or anyone else, that he wanted to hire an attorney, and at the hearing he failed to demonstrate how the confinement prejudiced his defense. (Arkansas Department of Corrections)

U.S. Appeals Court
PROTECTIVE CUSTODY

Divers v. Department of Corrections, 921 F.2d 191 (8th Cir. 1990). An inmate in protective custody brought a Section 1983 action against the Missouri Department of Corrections, a prison superintendent, and a unit manager to challenge different treatment of inmates in lock-down protective custody. The U.S. District Court dismissed the complaint as legally frivolous, and the inmate appealed. The court of appeals found that the following claims were not frivolous: better treatment given to certain subgroups in protective custody, denial of religious services, allotment of only 45 minutes of exercise time per week, inadequate laundry facilities and cleaning supplies, inadequate diet, inadequate clothing, and limitation on phone calls to attorneys. (Missouri Training Center for Men)

U.S. District Court
PROTECTIVE CUSTODY
CONDITIONS

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)

U.S. Appeals Court
ASSIGNMENT
PROTECTIVE CUSTODY
LENGTH
REGULATIONS
LIBERTY INTEREST

Kellas v. Lane, 923 F.2d 492 (7th Cir. 1990). An inmate brought a civil rights action challenging his continued involuntary placement in protective custody and sought a preliminary injunction seeking to enjoin prison officials from keeping him detained in protective custody. The U.S. District Court denied the injunction, and the inmate appealed. The court of appeals affirmed in an unpublished decision. In a subsequent published decision, the court of appeals found that the Illinois administrative code did not create a liberty interest in being in the prison's general population, since its language was not mandatory; all the code did was spell out various factors that prison authorities may consider when deciding whether to place an inmate in involuntary protective custody. The code did not limit their discretion as to making the decision. (Joliet Correctional Center, Illinois)

U.S. District Court
PLACEMENT
CONDITIONS
PRIVILEGES

Lomax v. McCaughtry, 731 F.Supp. 1388 (E.D. Wis. 1990). Inmates brought a civil rights action against prison employees alleging constitutional violations in connection with their placement in administrative detention and in connection with their being required to submit to drug tests. The district court found that inmates had no right to due process before being placed in temporary lockup after their urine tested positive for cocaine. The inmates failed to show they were deprived of any liberty or property right to which they were entitled under the Federal Constitution or state law. The investigative lieutenant at the prison had cause to believe that the inmates were using narcotics based on information from a usually reliable informant and, thus, requiring a urine test of inmates was reasonable under the fourth amendment. It was also found by the court that the inmates failed to show that the urine test was tantamount to cruel and unusual punishment proscribed by the eighth amendment, and they failed to state equal protection claims in connection with alleged deprivations suffered during approximately a two-week period they spent in temporary lock-up. Even assuming that they were not allowed to have certain items of personal property and that they were denied access to the law library, hobby department, and religious services, such deprivations were de minimis and were imposed in order to accommodate legitimate administrative concerns. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
SEARCHES

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. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
WORK
PRIVILEGES

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
DUE PROCESS
PLACEMENT

Moore v. Dowd, 731 F.Supp. 921 (E.D. Mo. 1990). A state prisoner brought an action against prison officials and corrections officers, alleging violations of his rights under the eighth and fourteenth amendments. On a motion of the prison officials and corrections officers for summary judgment, the district court found that the prisoner was not deprived of due process in his transfer from protective custody to administrative segregation. According to the court, the prisoner received all process he was due with respect to his transfer from protective custody to administrative segregation, and there was no due process violation even assuming the prisoner had a liberty interest in protective custody or in being free from the administrative transfer, where the prisoner was afforded an informal, nonadversarial review of the transfer decision within a reasonable time and there was justification for the transfer in the prisoner's violent, aggressive behavior, which made placement in the protective custody unit inappropriate. (Farmington Correctional Center, Missouri)

U.S. District Court
CONDITIONS
DUE PROCESS
EXERCISE
LIBERTY INTEREST

Pressley v. Brown, 754 F.Supp. 112 (W.D. Mich. 1990). An inmate brought an action challenging the denial of exercise privileges. Following a recommendation for summary judgment in favor of prison officials, the U.S. District Court found that neither a state regulation mandating that prisoners in punitive segregation be deprived of exercise privileges for more than 30 consecutive days, after which they are to receive seven days of standard exercise privileges, nor a state court decision requiring a minimum exercise entitlement of one hour per day, five days per week, except for prisoners in punitive segregation, gave the prisoner in punitive segregation a liberty interest protected by due process in regular exercise. The court did find that a genuine issue of fact existed as to

whether a denial of exercise privileges violated the Eighth Amendment. The prisoner asserted that his constant confinement without exercise for lengthy periods produced a series of serious health problems, specifically including stomach and bowel problems. (Marquette Branch Prison, Michigan)

U.S. Appeals Court
LIBERTY INTEREST
DUE PROCESS
REVIEW

Russell v. Coughlin, 910 F.2d 75 (2nd Cir. 1990). A state inmate brought a civil rights action against prison officials alleging that he had been wrongfully restricted to his cell for ten days without receiving a notice of the charges against him and without receiving a hearing. The U.S. District Court denied the prison officials' summary judgment motion seeking qualified immunity, and the prison officials appealed. The appeals court, affirming and remanding, found that the prison officials were not entitled to qualified immunity from liability. Generally, the restrictive confinement of a state inmate imposed for administrative reasons does not implicate a liberty interest unless the state, by enacting certain statutory or regulatory measures, creates a liberty interest in remaining in the general prison population. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
RESTRICTIONS

Sanders v. Woodruff, 908 F.2d 310 (8th Cir. 1990). An inmate brought a civil rights action alleging that his reassignment from one level to a more restrictive level within a special management facility of the Missouri state penitentiary violated his due process rights. The appeals court found that evidence supported the conclusion that all three levels of the special management facility served as administrative segregation. Missouri statute and regulations dealing with the placement of inmates in administrative segregation units did not contain particularized substantive standards to guide the decision makers or mandatory language requiring decision makers to act in a certain way that would be applicable to an inmate already assigned to administrative segregation. The factual record before the court of appeals was not such that the Court could grant relief on the inmate's pro se request for injunctive relief. (Missouri State Penitentiary)

U.S. District Court
CONDITION
DIET
MEDICAL TREATMENT
PLACEMENT
RELIGIOUS SERVICES

Stroud v. Roth, 741 F.Supp. 559 (E.D. Pa. 1990). An inmate brought an action against prison officials alleging that he was denied his right to free exercise of his Islamic faith while being held in administrative segregation and that his medical treatment and diet for stomach problems were inadequate. On the prison officials' motion for summary judgment, the district court found that precluding the prisoner from attending Islamic Services while he was in administrative segregation for his own protection was not an improper limitation on his free exercise rights, based upon threats of retaliation within the prison's Muslim community following the inmate's assault of the inmate Muslim leader. The restriction was related to a legitimate interest in maintaining the inmate's safety and in preserving general institutional security. The inmate was afforded an opportunity to participate in services by watching closed circuit television or video-tapes of the prison's services. Allowing the inmate to attend Islamic services with the general prison population could jeopardize the security of other prisoners and prison personnel, and there appeared to be no safe alternatives involving the inmate's physical presence at services. It was also found by the court that the inmate received on-going medical attention and treatment for his stomach problems that did not amount to deliberate indifference to his serious medical needs. The inmate received doctor's care for his stomach problems nearly every month he spent at the prison. He was provided medication and a bland diet according to doctor's orders and was given vegetarian meals when his stomach problems did not sufficiently respond. There was no evidence that the inmate's digestive troubles and dietary needs were ignored, or his prescribed treatment thwarted, by prison officials. The inmate received ongoing medical attention and treatment and, at most, his claims of inadequate treatment sounded in tort. (Montgomery County Correctional Facility, Pennsylvania)

U.S. Appeals Court
REVIEW
PLACEMENT

Toussaint v. McCarthy, 926 F.2d 800 (9th Cir. 1990), cert. den., 112 S.Ct. 213. Inmates and prison administrators appealed an order of the United States District Court which granted permanent injunctive relief with respect to placement of inmates in administrative
segregation. The court of appeals affirmed in part, reversed in part, vacated in part and remanded. The U.S. District Court modified the injunction and appeal was taken. The court of appeals found that continued appointment of a monitor to review decisions to assign inmates to segregation for administrative reasons for possible due process violations was not warranted absent a showing that the prison administrators' procedures for segregation did not comply with due process. (California Department of Corrections)

1991

U.S. Appeals Court
CONDITIONS
ACCESS TO COURTS
DUE PROCESS

Chandler v. Baird, 926 F.2d 1057 (11th Cir. 1991). A county inmate brought a suit against jail officials, arising out of his being placed in administrative confinement. The inmate alleged a violation of procedural due process, a violation of the Eighth Amendment in the conditions of his confinement, and deprivation of his constitutional right to legal

materials and access to courts. The U.S. District Court granted summary judgment for the defendants, and the inmate appealed. The court of appeals found that the Florida Administrative Code provision that inmates in county and municipal detention facilities may be placed in administrative confinement, and that such action shall be followed by a report and formal disciplinary proceedings, if applicable, does not create a liberty interest triggering a requirement of procedural due process, as the provision lacks requisite mandatory language. The inmate failed to establish that he was denied access to the courts during the time he spent in administrative confinement, where there was no relation between alleged refusals of legal materials, depositions, telephone calls, mail, and pen and paper and, any legal proceedings which could have been affected by the refusals, and thus no prejudice was shown. There was evidence, however, alleging that the conditions of administrative confinement violated the Eighth Amendment proscription of cruel and unusual punishment which raised genuine issues of material fact whether conditions of confinement, principally with regard to cell temperature and provision of hygiene items, violated minimal standards required, precluding summary judgment. (Indian River County Jail, Florida)

U.S. Appeals Court
LIBERTY INTEREST

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
CONDITIONS
PROTECTIVE
CUSTODY

Grace v. Wainwright, 761 F.Supp. 1520 (M.D. Fla. 1991). A state inmate brought a civil rights action against the former Secretary of the Department of Corrections, the former superintendent of the state prison, the current Secretary of the Department of Corrections, the State of Florida, and the Florida Department of Corrections. The district court found that the inmate did not have a viable claim for cruel and unusual punishment based on the allegations that he was denied outdoor exercise, sunlight, and fresh air. He was confined twenty-four hours a day in a protective confinement wing because of his inability to live safely in the open population. In this type of confinement, he was forced to relinquish all opportunities to acquire outside exercise, sunshine, and fresh air, but he was able to exercise in his cell which included the opportunity to jog in place, perform aerobics, and do pushups. (Florida State Prison, Starke, Florida)

U.S. District Court
DUE PROCESS
PLACEMENT

Harris v. Murray, 758 F.Supp. 1114 (E.D. Va. 1991). A prisoner brought a Section 1983 claim. The U.S. District Court found the prisoner was not denied due process as a result of not being given a hearing before being placed in detention in response to a charge concerning his failure to leave the visiting room in a timely manner, absent allegations by the prisoner that he did not receive adequate due process after the detention or that conditions of confinement were less than adequate. (Nottoway Correctional Center, Virginia)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
PLACEMENT
REVIEW

Jackson v. Bostick, 760 F.Supp. 524 (D. Md. 1991). Prisoners brought civil rights actions claiming their constitutional rights were violated by their placement in administrative segregation on the basis of their alleged status as escape risks. On the defendants' motions to dismiss or for summary judgment, the district court found that a prisoner does not have a protected liberty interest, subject to due process protection, in avoiding administrative segregation in a detention center where the center's regulations expressly provide that such segregation could be initiated at the discretion of certain prison officials for the purpose of maintaining internal control. In addition, a prisoner is not denied procedural due process in connection with his administrative segregation where he receives all procedural rights granted to him under the correction division's mandatory review procedure, which includes notice of charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation. Substantive due process requires that the inmate challenging the allegation that he is an escape risk be given an opportunity within a reasonable time after being placed in administrative segregation to appear before a hearing officer. The hearing officer must then make an independent determination, based on information which he finds to be reliable, as to whether the inmate does constitute an escape risk; one prisoner's right to substantive due process in connection with the decision to place him in administrative segregation was violated where the prison hearing officer, who made the decision, did not exercise his independent judgment as to whether the prisoner constituted

an escape risk, but relied solely upon a report from a police department that the prisoner was an escape risk. The court also found that the jail commissioner enjoyed qualified immunity from liability, since the right to substantive due process was not clearly established at the time of the violation. (Baltimore City Jail, Prince George's County Detention Center, and Maryland Reception Diagnostic & Classification Center)

U.S. Appeals Court
PLACEMENT

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. District Court
DUE PROCESS
LIBERTY INTEREST

Lipscombe v. Ridley, 780 F.Supp. 16 (D.D.C. 1991). An inmate brought a Section 1983 suit alleging that his placement in administrative segregation violated due process. The district court found that the decision to place the inmate in administrative segregation met constitutional due process requirements, where the inmate received notice of the charges against him, and had two prompt hearings. (Maximum Security Facility, Lorton Correctional Complex, District of Columbia)

U.S. District Court
DUE PROCESS
PLACEMENT

Loukas v. Hofbauer, 784 F.Supp. 377 (E.D. Mich. 1991). An inmate brought a civil rights action in connection with his classification to administrative segregation. On the defendants' motion to dismiss and for summary judgment, the district court found that the hearing officer in connection with the classification of the inmate was entitled to absolute judicial immunity from Section 1983 liability as it was not alleged that she was acting beyond the scope of her authority. It was also found that the prison officials involved were entitled to dismissal from the action absent evidence that they were personally involved in any of the alleged constitutional deprivation in connection with the classification of the inmate to administrative segregation; one official was merely alleged to have been aware of the inmate's constitutional rights, yet not to have acted to prevent any violation, and another official was alleged to have classified the inmate in administrative segregation pursuant to a notice of intent, and the inmate, having waived the offer, presented at his hearing, of an additional 24 hours to permit preparation of a response to charges in connection with his classification to administrative segregation, could not claim that he was deprived of his right to notice, as he did receive adequate notice of the charge necessitating his classification to administration segregation. Although the charge did not appear on the notice of intent, the inmate was provided with an explanation of the charge at his hearing. The inmate was not required to avail himself of available postdeprivation remedies before stating a due process cause of action arising out of the deprivation of liberty interest in connection with the calculation of a four-day temporary segregation period, as the state should have provided a predeprivation hearing; such hearing was in fact provided for by regulation. (Michigan Department of Corrections)

U.S. Appeals Court
DUE PROCESS
PLACEMENT

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 the 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. (Anderson County Jail, Tennessee)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Pardo v. Hosier, 946 F.2d 1278 (7th Cir. 1991). Inmates filed suits alleging that they had been denied due process in disciplinary proceedings. After the cases were consolidated, the U.S. District Court granted motions for summary judgment in part and denied motions in part. The district court entered judgment on a jury verdict awarding an inmate nominal damages, and appeals were taken. The court of appeals found that state law did not create a liberty interest in a prisoner remaining in the general prison population, so as to sustain a claim that his placement in a segregated area of the prison violated his due process rights. Procedures set forth in regulations were guidelines and did not mandate a particular outcome if the procedures were followed, or require release from administrative segregation if procedures were not followed. In addition, another prisoner did not have a protected liberty interest under state law, protected by the process clause, violated by his placement in administrative segregation pending a hearing on a charge against him; as the regulation providing for such placement, while using mandatory language to establish pertinent criteria for determining whether segregation should be imposed, left the ultimate resolution to the discretion of prison officials. (Pontiac Correctional Center, Illinois)

U.S. District Court
DUE PROCESS
PLACEMENT

Pratt v. Rowland, 770 F.Supp. 1399 (N.D. Cal. 1991). A prisoner sued a prison, seeking injunctive relief from administrative segregation. The district court found that the prisoner was given adequate notice of the charges in the disciplinary proceeding brought against him, to satisfy due process as it applies to prisoners. The prisoner was informed that he was being charged with trafficking and possession of marijuana based on a confidential memorandum, and he was allowed to review the memorandum, with names of informant redacted, prior to the hearing. It was further found that the prisoner was not entitled to be removed from administrative segregation on the grounds that he was placed there in retaliation for his vigorous pursuit of legal remedies, his political beliefs and his impending parole hearing. There was no evidence of retaliatory conduct on the part of the prison officials, and even if there was, the prison had a legitimate reason for placing him in administrative segregation, as marijuana had been found in his room. However, although the prisoner was not entitled to release from administrative segregation, an injunction was appropriate to prevent harassment of the prisoner or imposing penalties or other reprisals on him due to his high profile status and legal activities. (California Department of Corrections)

U.S. Appeals Court
LIBERTY INTEREST
DUE PROCESS

Rodi v. Ventetuolo, 941 F.2d 22 (1st Cir. 1991). An inmate sued prison officials for an injunction, declaratory judgment, and money damages under Section 1983 alleging that officials violated his rights to due process and equal protection by transferring him to administrative segregation without cause, notice or an opportunity to be heard. Prison officials moved to dismiss. The U.S. District Court dismissed the complaint for failure to state a claim, and the inmate appealed. The court of appeals found that emergency provisions of rules governing administrative segregation proceedings in prison endowed an inmate with a protected liberty interest in remaining in general prison population under the Fourteenth Amendment for the purpose of a Section 1983 claim, where provisions established mandatory procedures as necessary for temporary reassignment, requiring, among other things, written notice to the inmate, compilation of the record, scrutiny of record to high echelon officials, issuance of the report, and more formal review by a classification board within one week following reassignment. The allegation that the inmate spent more than twice the amount of time in administrative segregation without being given an opportunity to be heard than that required under prison rules stated a claim for deprivation of procedural due process. (Adult Correctional Institution, Rhode Island State Penitentiary)

U.S. Appeals Court
DUE PROCESS

Santana v. Keane, 949 F.2d 584 (2nd Cir. 1991). A pro se inmate brought a Section 1983 action alleging a deprivation of liberty without due process. The U.S. District Court dismissed, and the inmate appealed. The court of appeals, reversing and remanding, found that the inmate's civil rights complaint alleging that he was placed in keeplock, that he was not given a hearing for five days, and that the hearing took four days to conclude, stated a claim for deprivation of liberty without due process; the record shed no light on the reasons for the delay. (New York)

U.S. District Court
HYGIENE

Scher v. Purkett, 758 F.Supp. 1316 (E.D. Mo. 1991). Inmates who were confined to punitive segregation filed a civil rights action against correctional officials. The U.S. District Court found that the denial of shampoo and deodorant to those inmates was not cruel and unusual punishment, and the lawsuit would be dismissed as frivolous. The court noted that such items as shampoo and deodorant may enhance one's beauty, appearance, and level of personal hygiene, but the denial of these toiletries, however, does not rise to the level of a constitutional violation. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
DUE PROCESS
PLACEMENT
REVIEW

Smith v. Shettle, 946 F.2d 1250 (7th Cir. 1991). State inmates filed a civil rights action, seeking damages and other relief for being confined in administrative segregation. The U.S. District Court dismissed the suit, and the inmates appealed. The court of appeals, affirming the decision, found that the inmates, who had received notice and an opportunity to be heard, had received all the process due them with respect to their placement in administrative segregation. In addition, due process did not require the inmates' personal presence at reviews of their placement in administrative segregation, unless the inmates could show that the presence was important to the review process. It was also found that the mere fact that Indiana law required a review of a prisoner's placement in administrative segregation every 30 days did not establish such frequency as constitutional minimum or maximum under the due process clause. (Indiana State Prison)

U.S. District Court
DUE PROCESS
PLACEMENT

Strickland v. Delo, 758 F.Supp. 1319 (E.D. Mo. 1991). An inmate brought a civil rights action against prison officials, alleging due process violations at disciplinary hearings. On the defendants' motion for summary judgment, the district court found that the prison officials could not be held liable in the civil rights action for failing to give the inmate the proper form before placing him in temporary administrative segregation confinement, where the inmate failed to identify any official who was personally responsible for delivering the form to him. In addition, the inmate's due process rights were not violated when a member of the prison adjustment board also served on the classification team that recommended the inmate's administrative segregation, where the member did not report the alleged conduct violation to the inmate or set in motion the general investigation in response to reports of general misconduct. It was also found that the prison officials' failure to allow the inmate to call witnesses on his behalf at the adjustment board hearings did not violate the inmate's due process rights, where permitting him to do so would have jeopardized institutional safety. (Potosi Correctional Center, Missouri)

U.S. District Court
LENGTH

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, precluding summary judgment for the prison officials, existed as to whether keeping the prisoner detained in a quiet cell for more than two hours violated prison policy, as a prison procedure requires that a prisoner be removed from a quiet cell after remaining calm for two consecutive hours. (State Prison of Southern Michigan in Jackson)

U.S. District Court
PLACEMENT

U.S. v. Gotti, 755 F.Supp. 1159 (E.D. N.Y. 1991). Pretrial detainees obtained an order directing the warden of a federal facility and the United States Attorney to show cause why an order releasing them, or in the alternative, modifying the conditions of their pretrial detention, should not be entered. The U.S. District Court found that the fact that pretrial detainees who were charged with multiple murders, conspiracy and solicitation to murder, and obstruction of justice, including witness tampering, did not justify their placement in administrative detention, in absence of evidence that since the detainees had been in custody they committed an act or omission which posed a serious threat to inmates or to the security of the institution. (Metropolitan Correction Center, New York)

1992

U.S. District Court
PROTECTIVE
CUSTODY

Banks v. Fauver, 801 F.Supp. 1422 (D. N.J. 1992). An inmate who was placed in involuntary protective confinement brought an action against prison officials alleging violation of due process. On the officials' motion to dismiss, the district court found that the prison officials' reliance on an anonymous caller's tip to support the involuntary protective confinement of the inmate did not deny the inmate due process. The claims of the anonymous informant that the inmate was in danger if left in the general population were corroborated by information that the inmate was involved in drug trafficking, which might be thought to expose him to the risk of violence from other inmates. In addition, the inmate received notification of the charges against him and was afforded the opportunity to introduce evidence on his behalf. (Northern State Prison, New Jersey)

U.S. Appeals Court
DUE PROCESS
PLACEMENT

Brown-El v. Delo, 969 F.2d 644 (8th Cir. 1992). An inmate brought a civil rights suit against Missouri Prison officials alleging that his placement in administrative segregation denied him due process. The U.S. District Court entered summary judgment in favor of the prison officials and the inmate appealed. The court of appeals found that whether the inmate was deprived of due process by being placed in administrative segregation for punitive reasons before a hearing was conducted was a fact question. The court ruled that prison officials may have violated the inmate's due process rights by placing the inmate in administrative segregation without a prior hearing if the placement was for punitive reasons. The inmate was allegedly segregated on grounds that an "immediate security

risk" was presented in spite of evidence that the inmate remained in the general prison population two months after committing the violations. (Missouri State Penitentiary)

U.S. Appeals Court
PROTECTIVE CUSTODY

Falls v. Nesbitt, 966 F.2d 375 (8th Cir. 1992). An inmate brought a suit against a prison official for damages for injuries sustained when he was stabbed by a fellow inmate. The U.S. District Court awarded the inmate damages in the amount of $250 and enjoined the official from housing protective custody inmates with general population inmates. The prison official appealed. The appeals court reversed the decision, finding that while the prison official may have been negligent in placing the inmate in protective custody in a cell with an inmate from the general prison population, the prison official was not deliberately indifferent to the inmate's rights. (Cummins Unit of the Arkansas Department of Corrections)

U.S. District Court
ASSIGNMENT

Garcia v. Burns, 787 F.Supp. 948 (D. Nev. 1992). An inmate brought a civil rights action alleging that prison officials violated his constitutional rights when he was held in segregated housing for more than two weeks after being classified to general population immediately after his transfer to the correctional center. The defendants moved for summary judgment. The district court found that holding the prisoner in administrative segregation for more than two weeks did not violate the prisoner's due process rights. The correctional center had legitimate non-punitive reasons for keeping new transferees in a designated cell until beds were available in the general population, and the prisoner had received a classification hearing shortly after his arrival. (Northern Nevada Correctional Center)

U.S. Appeals Court
EQUAL PROTECTION
HOMOSEXUALS
LIBERTY INTEREST
PRIVILEGES
WORK

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 discriminatory policy. (Franklin County Jail, Columbus, Ohio)

U.S. Appeals Court
DUE PROCESS
PLACEMENT

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

U.S. Appeals Court
LAW LIBRARY

Jenkins v. Lane, 977 F.2d 266 (7th Cir. 1992). An inmate housed in a protective custody unit brought a Section 1983 action alleging that the prison's library policy prevented adequate access to courts. The U.S. District Court dismissed the action on summary judgment and the inmate appealed. The appeals court, affirming the decision, found that substantial and continuous limitation on the inmate's access to court is any restriction on counsel or legal material that completely prevents the prisoner, or person acting in the prisoner's behalf, from performing preliminary legal research. However, the restrictions imposed upon inmates in protective custody to use the library were minor and incidental. Although the inmate was banned from the library, he was allowed to personally meet with clerks who could do research for him. The court noted that the prison's policy of banning the prisoners who were confined in protective custody from the library did not prejudice the inmate as there was no showing that the policy prevented the inmate from obtaining case law. (Pontiac Correctional Center Illinois)

U.S. District Court
ASSIGNMENT
DUE PROCESS
LIBERTY INTEREST

Keeler v. Pea, 782 F.Supp. 42 (D. S.C. 1992). An inmate brought a suit under Section 1983 alleging that a prison official violated his constitutional rights when he charged the inmate with an institutional violation and placed him in lockup after the inmate advisory council found the inmate not guilty. A U.S. Magistrate recommended summary judgment for the prison official, and the inmate objected. The U.S. District Court found that the fact the inmate was found not guilty by the inmate advisory council did not indicate that the prison official lacked probable cause to file charges given information available at the time, and neither state law nor the due process clause created a liberty interest in the inmate remaining in the general population. The prison officials were entitled to qualified immunity. (Dutchman Correctional Institution, South Carolina)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST
PLACEMENT

Layton v. Beyer, 953 F.2d 839 (3rd Cir. 1992). An inmate brought a civil rights action against prison officials, claiming that due process was violated when officials failed to provide him with a hearing within five working days from the date he was removed from the general prison population and placed in restrictive custody. The U.S. District Court entered judgment in favor of the inmate, and the officials appealed. The appeals court, vacating and remanding, found that the inmate had a protected liberty interest in remaining in the general prison population. The inmate was entitled to a hearing within 0a reasonable time after being placed in restrictive custody. In determining whether a hearing was afforded to the inmate within a reasonable time, the answer could be determined only by careful review and by consideration of the totality of then existing circumstances. Inquiry was required to focus upon balancing needs for and dangers to prison security against the inmate's interest in a prompt hearing. The district court had ruled that due process was violated based on a violation of a prison regulation requiring a hearing within five working days without determining whether the delay was reasonable. (New Jersey State Prison, Trenton, New Jersey)

U.S. District Court
DIET
EQUAL PROTEC-
TION

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. In addition, denial of coffee with morning meals served to the inmate and others in the segregation unit, while not depriving the remainder of the prison population of coffee, was rationally related to legitimate penological goals of maintaining discipline and prison safety and therefore did not violate the inmate's equal protection rights. (Joliet Correctional Center, Joliet, Illinois)

U.S. Appeals Court
APPOINTED
ATTORNEY

Moore v. Mabus, 976 F.2d 268 (5th Cir. 1992). A state prisoner brought in forma pauperis Section 1983 action claiming he had been mistreated because he had the HIV virus (Human Immunodeficiency Virus). The U.S. District Court dismissed the complaint as frivolous, and an appeal was taken. The court of appeals, reversing, vacating, and remanding, found that the claim should not have been dismissed as frivolous. There were instances of potentially disputed facts resolved against him by the district court. However, the privacy rights of the prisoner had not been violated by his placement into an area set aside for prisoners who had tested positive for the virus. The court also found that the prisoner was entitled to have court appointed counsel, as the type and complexity of issues raised in the complaint deserved professional development. The complex subject of HIV and AIDS (Acquired Immune Deficiency Syndrome) management in prison environment was beyond the ability of the prisoner to investigate adequately, the scope of questions raised and resources required to pursue questions exceeded the capabilities of the prisoner, and apparently essential testimony from experts would require a questioner with professional trial skills. (Mississippi State Penitentiary, Parchman, Mississippi)

U.S. Appeals Court
PLACEMENT

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

U.S. Appeals Court
DUE PROCESS
EVIDENCE
INFORMANT
PLACEMENT

Ryan v. Sargent, 969 F.2d 638 (8th Cir. 1992), cert. denied, 113 S.Ct. 1000. An inmate brought a civil rights action after being assigned to administrative segregation based on a confidential inmate informant's information detailing escape plans. Summary judgment against the inmate was granted by the U.S. District Court, and the inmate appealed. The appeals court, affirming the decision, found that there was sufficient corroboration to establish the reliability of the confidential inmate informant's information with respect to another prisoner's alleged escape plans, such that the prisoner was not deprived of due process when he was placed in administrative segregation. An officer corroborated two specific details, clothing and destination, mentioned in the informant's letter. (Cummins Unit, Arkansas Department of Corrections)

U.S. Appeals Court
CONDITIONS
EQUAL PROTECTION
PROTECTIVE CUSTODY
RECREATION

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 court found that the out-of-cell time of forty-five minutes per week did not violate the Eighth Amendment rights of the inmate who was assigned to a protective custody unit for his own safety. The restriction did not cause the inmate to suffer any injury or decline in health, he had not used all recreation time available to him, and he had an opportunity to exercise within the cell. 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. The court found that the inmate failed to establish an equal protection violation arising from the denial of access to education and vocational opportunities. The inmate, who was required to be on lock-down status during most of each day for safety and security, did not show that he was treated differently from other inmates who were similarly situated in the general population. The inmate had access to self-study materials, college correspondence courses, and library materials. (Moberly Training Center for Men, Missouri)

1993

U.S. District Court
HUNGER STRIKE
PLACEMENT

Ball v. Sledd, 814 F.Supp. 48 (D. Kan. 1993). An inmate who was placed in administrative segregation after he began a hunger strike brought a civil rights action alleging his constitutional rights were violated. The defendant correctional officials brought a motion for summary judgment. The district court granted the motion, finding that the action taken to place the inmate in administrative segregation was taken in compliance with the policy of the Kansas Department of Corrections, and, thus, the inmate's constitutional rights were not violated. (Osawatomie Correctional Facility, Kansas)

U.S. District Court
DUE PROCESS
PLACEMENT

Casey v. Lewis, 837 F.Supp. 1009 (D. Ariz. 1993). Inmates brought an action against prison officials alleging due process violations. The district court found that inmate classification and administrative segregation policies did not create liberty interests for inmates in a particular classification, in not having the classification score increased, or in remaining in the general population. Liberty interest in being free from administrative segregation is not created even when administrative segregation involves severe hardships. These hardships may include denial of access to educational, recreational, vocational and rehabilitative programs, confinement to cells for long periods, or restrictions in exercise privileges. Even if the inmates had such a liberty interest to be in the general population and free from administrative segregation and to not have their

classification scores increased, it was found that prison officials provided the inmates with sufficient due process: (1) every six months, the institutional classification committee (ICC) conducted classification hearings for each inmate; (2) the inmate was notified of the hearing and had an opportunity to provide a statement or witnesses' statements; (3) the ICC decision was reviewed by the warden or administrator of the facility and by central classification before it was implemented; (4) the inmate was then provided with a written notice of the determination; (5) the inmate could appeal the final determination made by central classification to the administrator of the bureau of offender services; and (6) the bureau had the authority to uphold or modify the classification or to order a rehearing. (Arizona Department of Corrections)

U.S. District Court
LENGTH

Cummings v. McCarter, 826 F.Supp. 299 (E.D. Mo. 1993). An inmate brought a suit against several prison employees and the employees moved for summary judgment. The district court found that placing the inmate in administrative segregation for two years was not cruel and unusual punishment considering the inmate's repeated conduct violations. (Potosi Correctional Center, Missouri)

U.S. District Court
DUE PROCESS
INFORMANT

Farr v. Blodgett, 810 F.Supp. 1485 (E.D. Wash. 1993). A Washington prison inmate brought a civil rights action claiming that prison officials' actions in confining him to administrative segregation violated his due process rights. Prison officials moved for summary judgment. The district court found that the inmate had a liberty interest in remaining in the general prison population. This was created by a Washington administrative segregation regulatory provision, stating that the prison superintendent must verify the reason for placing an inmate in segregation and document facts supporting the reason, when read with another provision stating that its purpose is to define reasons for segregating inmates. The verification provision contains conditions that are substantive predicates to placement of inmates in administrative segregation. In addition, the confidential information used to place the inmate in administrative segregation possessed sufficient indicia of reliability to satisfy due process considerations. A correctional officer's affidavit and his written reports established that a confidential informant had provided reliable information in the past and that the administrative segregation hearing committee chairperson was given access to the confidential materials that identified the informant. The officer's confidential report, submitted to the hearing chairperson and to district court, incorporated his materials documenting the informant's reliability. (Washington State Penitentiary, Walla Walla, Washington)

U.S. Appeals Court
LIBERTY INTEREST
REGULATIONS

Hall v. Lombardi, 996 F.2d 954 (8th Cir. 1993). An inmate brought a Section 1983 action against prison officials alleging that they violated his Fourteenth and Eighth Amendment rights by failing to release him from special management after he had been approved for reassignment to the general population of the prison. The U.S. District Court denied the prison officials' motion for summary judgment based on a claim of qualified immunity, and the prison officials appealed. The appeals court, affirming the decision, found that genuine issues of material fact existed as to whether the prison officials were entitled to qualified immunity, precluding summary judgment. (Special Management Facility of the Missouri State Penitentiary)

U.S. Appeals Court
DUE PROCESS
PLACEMENT
REVIEW

Jones v. Coonce, 7 F.3d 1359 (8th Cir. 1993). Inmates placed in administrative segregation brought a Section 1983 action against prison officials, alleging a violation of their due process rights. The U.S. District Court entered partial summary judgment in favor of the inmates, and the officials appealed. The appeals court, affirming in part, reversing in part and remanding, found that thirty days was not a reasonable time for administrative segregation of inmates without an informal nonadversary hearing. Officials were not entitled to qualified immunity on the inmates' Section 1983 due process claims. In addition, prison officials' "walk-by" of a cell and telling the inmates placed in administrative segregation their status did not constitute an informal hearing for purposes of the inmates' Section 1983 action. (Missouri State Penitentiary)

U.S. Appeals Court
DUE PROCESS
PLACEMENT
PRIVILEGES

Russell v. Scully, 15 F.3d 219 (2nd Cir. 1993). A state prisoner brought a Section 1983 action against various prison officials, alleging that his constitutional rights were violated by a prison disciplinary hearing. After summary judgment for the officials was denied, the U.S. District Court granted summary judgment motions in part and denied them in part, and appeal was taken. The appeals court found that neither the due process clause nor state law created an interest in being confined to a general population cell pending the inmate's hearing and appeal with respect to an incident occurring at prison. However, though administrative confinement was not unconstitutional, the loss of privileges during that time was punitive, and the inmate could seek damages for that loss. It was not

clearly established that a hearing officer followed a constitutionally inadequate independent examination of the credibility of informants, and thus he was protected by qualified immunity. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
LIBERTY INTEREST

Smith v. Noonan, 992 F.2d 987 (9th Cir. 1993). An inmate in the Washington State Penitentiary filed a Section 1983 action against prison officials for violation of his liberty interest after he was placed in administrative segregation during an investigation of allegations that he had threatened another inmate and a corrections officer. The U.S. District Court granted summary judgment to prison officials, and the inmate appealed. The appeals court, affirming the decision, found that the Washington Administrative Code providing for segregation of an inmate if, in the superintendent's judgment, his presence in the general population would be a serious threat to others or himself, did not create a liberty interest requiring the inmate to remain in the general prison population. (Washington State Penitentiary)

1994

U.S. Appeals Court
RELIGIOUS SERVICES

Bettis v. Delo, 14 F.3d 22 (8th Cir. 1994). A Native American inmate brought a civil rights action against corrections officials alleging a violation of his First Amendment right to free exercise of religion. A summary judgment for the defendants was granted by the U.S. District Court and the inmate appealed. The appeals court, affirming the decision, found that prison regulations under which the Native American inmate was required to have his hair cut did not unconstitutionally infringe on the inmate's First Amendment right to free exercise of religion. In addition, prison regulations prohibiting ceremonial pipes, medicine bags, eagle claws, and alter stones in administrative segregation were necessary because of increased security risks. The appeals court affirmed that the regulations did not violate the Native American inmate's First Amendment right to free exercise of religion. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
PLACEMENT IN SEGREGATION

Caraballo-Sandoval v. Honsted, 35 F.3d 521 (11th Cir. 1994). A prisoner brought a civil rights action against prison officials. The U.S. District Court dismissed the action and the prisoner appealed. The appeals court found that the prisoner neglected to apply for any administrative remedy after his placement in a dry cell for allegedly receiving contraband from a visitor and, therefore, he failed to exhaust administrative remedies for the incident. (Federal Correctional Institution, Marianna, Florida)

U.S. District Court
ASSIGNMENT
DUE PROCESS

Chance v. Compton, 873 F.Supp. 82 (W.D.Tenn. 1994). An inmate brought an action challenging administrative segregation. The district court found that Tennessee prison regulations created a liberty interest in inmates not to be confined to punitive or administrative segregation without due process protections, and due process also required that a Tennessee prison inmate who is confined to punitive segregation or is deprived of sentence credits be provided with a disciplinary hearing. (Northwest Correctional Center, Tiptonville, Tennessee)

U.S. Appeals Court
EQUAL PROTECTION
PLACEMENT IN SEGREGATION

Clark v. Groose, 36 F.3d 770 (8th Cir. 1994). A prisoner brought a Section 1983 action against prison officials for his placement in administrative segregation. The U.S. District Court entered summary judgment in favor of the prison officials and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner was not impermissibly placed in administrative segregation for punitive reasons without a hearing. Evidence found that a portion of a form indicating that the prisoner was segregated because of serious wrongdoing was marked in error and the prisoner was separated because of pending first-degree murder charges. The court also found that the prisoner was not denied his equal protection rights based on an allegation that he continued to be confined to administrative segregation when other inmates were released into the general prison population. Although the other prisoners who were released also had pending first degree-murder charges, additional information concerning the prisoner justified the decision to place the prisoner in administrative detention and, therefore, the prisoner was not similar in every respect to the other prisoners. (Jefferson City Correctional Center, Missouri)

U.S. District Court
LIBERTY INTEREST
PLACEMENT REVIEW

Crowder v. True, 845 F.Supp. 1250 (N.D.Ill. 1994). A handicapped inmate brought an action challenging the lack of a hearing for his segregation. The district court found that a regulation requiring a segregation review officer to conduct a record review of an inmate's placement in administrative detention and to hold a hearing gives rise to a due process liberty interest. (Metropolitan Correctional Center, Chicago, Illinois)

U.S. District Court
CONDITIONS
HYGIENE

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 court found that neither subjecting the inmate confined to the special housing unit to unsanitary conditions for three days before the area was cleaned, nor allowing the inmate to witness an attempted suicide of an inmate in an adjoining cell was cruel and unusual punishment. (Attica Correctional Facility, New York)

U.S. District Court
ACCESS TO COURTS

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 alleged denial of legal materials in a segregation unit did not deprive the inmate of meaningful access to courts. (Graham Correctional Center, Illinois)

U.S. District Court
PLACEMENT
PROTECTIVE
CUSTODY

Howard v. Leonardo, 845 F.Supp. 943 (N.D.N.Y. 1994). An inmate brought a civil rights action claiming that he was confined to involuntary protective custody (IPC) in retaliation for the exercise of his constitutional rights. On the defendants' motion for summary judgment, the district court found that prison officials had a legitimate reason to confine the inmate to IPC, despite the inmate's claim that he was confined to IPC in retaliation for having drafted grievance forms and distributed them throughout the facility. Officials found a letter written by the inmate to a fellow inmate which constituted evidence of existence of an extortion attempt and threats of violence. (Great Meadow Correctional Facility, New York)

U.S. District Court
PROTECTIVE
CUSTODY
RECREATION

Jones v. Stine, 843 F.Supp. 1186 (W.D. Mich. 1994). A prisoner brought a civil rights action against a warden and deputy warden. The district court found that allegations of the inmate, who was voluntarily classified to protective segregation, that he was limited to five hours of outdoor recreation per week in a fenced-in module, were sufficient to allege an Eighth Amendment claim for cruel and unusual punishment. (Alger Maximum Correctional Facility, Munising, Michigan)

U.S. District Court
CONDITIONS

Killen v. McBride, 907 F.Supp. 302 (N.D.Ind. 1994). An inmate brought a civil rights action against prison officials seeking damages allegedly caused by this placement in a "bubble cell" for eight days. The district court granted the defendants' motion for summary judgment, finding that placement of the inmate in a bubble cell did not amount to deliberate indifference to the inmate's needs in violation of the Eighth Amendment, and that state prison officials were entitled to immunity for the inmate's claim for monetary damages. A "bubble cell" has a shield or bubble over the front of the cell to prevent the occupant from reaching or throwing objects through the bars. The inmate had reached through the bars of his previous cell and stabbed another inmate. (Westville Correctional Center, Indiana)

U.S. Appeals Court
LIBERTY
INTEREST
PLACEMENT
PROTECTIVE
CUSTODY

Kulow v. Nix, 28 F.3d 855 (8th Cir. 1994). An inmate filed a civil rights and habeas corpus action against a warden and a hearing officer. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the prison regulation governing involuntary protective custody did not create a due process liberty interest for placement in the general inmate population, in light of the permissive, rather than explicitly mandatory language of the regulation. (Iowa State Penitentiary)

U.S. District Court
LENGTH
LIBERTY INTEREST
PLACEMENT IN
SEGREGATION

Leslie v. Doyle, 868 F.Supp. 1039 (N.D. Ill. 1994). A state prisoner brought a civil rights action against various prison officials. On a motion of the defendants to dismiss for failure to state a cause of action, the district court found that segregation of a prisoner does not constitute cruel and unusual punishment, particularly in light of an Illinois statute prohibiting corporal punishment and disciplinary measures directed at diet, medical or sanitary facilities, clothing, bedding, mail or access to legal materials. The court also found that the appropriate challenge to the imposition of short-term periods, such as 15 days, of segregative confinement of an inmate is not subject to challenge under the Eighth Amendment, but under the Fourth Amendment prohibition against unreasonable seizures. In addition, though custody in prison is by definition a reasonable "seizure" of a convicted felon, it may be argued that the constitutional right to be free from unreasonable seizures embraces the inmate's entitlement not to be subjected to major further limitation on liberty, such as commitment in segregation, on the mere whim of a correctional officer. Finally, the court found that, under Illinois law, the inmate did not have a liberty interest in remaining in the general prison population. (Joliet Correctional Center, Illinois)

U.S. District Court
DUE PROCESS
PLACEMENT IN SEGREGATION

Lloyd v. Suttle, 859 F.Supp. 1408 (D. Kan. 1994). An inmate sued prison officials under Section 1983 alleging constitutional deprivation in connection with his confinement in administrative segregation following an inmate incident in which a prison guard was killed and another guard and inmate were seriously injured. The defendants moved for summary judgment. The district court found that no constitutional due process claim was implicated by prison officials' alleged failure to follow Kansas administrative requirements in placing the inmate in administrative segregated confinement. Kansas prison regulations do not create a protected liberty interest. The Kansas prison officials did not abuse their discretion by confining the inmate in administrative segregation. The inmate was identified as a leader in the prison gang believed to be partly responsible for the disturbance, which presented a clear threat to the security and control of the institution, and administrative confinement of the inmate and others was authorized by state administrative regulations. (Lansing Correctional Facility, Kansas)

U.S. District Court
DUE PROCESS
LENGTH
REGULATIONS
RESTRICTIONS

Losee v. Nix, 842 F.Supp. 1178 (S.D.Iowa 1994). An inmate brought a pro se Section 1983 action against prison officials, alleging violation of his constitutional rights in connection with his placement in investigative segregation. The district court found that the inmate's due process rights were not violated when he was placed in investigatory segregation for forty-one days. The inmate received sufficient notice of the purpose of the transfer to segregation and of his continuing segregation status. In addition, the inmate was interviewed by security staff, received a polygraph resulting in his return to the general population, and was provided an opportunity to present his views regarding charges. The court also found that a prison regulation restricting the amount of personal property held by inmates in investigative segregation did not unconstitutionally infringe on the inmate's rights. Legitimate penological interests required the limitation of personal property by segregated inmates, who resided in maximum security cell houses. It was also found that the inmate had no right to receive the full amount of back pay or full credit for time served because a regulation providing for some back pay or credit for time served at the discretion of the warden did not establish a liberty or property interest in the full amount. (Iowa State Penitentiary)

U.S. Appeals Court
DUE PROCESS
RETALIATION

Lowrance v. Achtyl, 20 F.3d 529 (2nd Cir. 1994). An inmate sued prison employees for alleged civil rights violations. The U.S. District Court granted summary judgment for the prison employees, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's Section 1983 claim, in which he alleged that a correction officer filed a misbehavior report against him in retaliation for his filing of a grievance, was properly dismissed on summary judgment. The inmate admitted to engaging in the conduct that formed the basis of the misbehavior report, and thus, even without any improper motivation, the report would have been issued on proper grounds. The inmate's prehearing confinement in administrative segregation did not deprive him of due process. The inmate's refusal to comply with an order of a corrections officer in the mess hall created at least the potential for a disruption of order and security of the prison. Subsequent administrative confinement was not arbitrary or conscience-shocking in the constitutional sense. (Shawangunk Correctional Facility, New York)

U.S. District Court
FREE SPEECH
RETALIATION
SEARCHES

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. District Court
LENGTH

Parker v. Shade, 872 F.Supp. 573 (E.D. Wis. 1994). An inmate in a county correctional facility brought an action alleging he was kept in segregated confinement beyond the end of the period imposed in prison disciplinary proceedings. Prison officials moved for summary judgment. The district court found that Racine Correctional Institution officials could not be responsible for any violations committed by the Kenosha County Jail in allegedly keeping the inmate 13 extra days in segregation prior to his transfer to the Racine Institution. In addition, the Racine Correctional Institution's two day delay in releasing the inmate from segregation did not violate his constitutional rights. The prison authorities acted promptly, and a two day delay to follow the necessary internal procedures before the inmate could be released from segregation was reasonably related to the prison's compelling security interest to ensure proper placement of prisoners. (Racine Correctional Institution, Wisconsin)

U.S. District Court
LIBERTY INTEREST
REGULATIONS

Price v. Kelly, 847 F.Supp. 163 (D.D.C. 1994). A pretrial detainee brought an action against officials and employees of a detention facility based on alleged misconduct occurring in connection with disciplinary proceedings. On the defendants' motions to dismiss or for summary judgment, the district court found that internal documents issued by the superintendent of the detention facility to govern the use of administrative segregation did not create a liberty interest in remaining in the general population, despite the superintendent's use of mandatory language. Internal procedures were not binding on the superintendent and, thus, were binding on employees of the detention facility rather than on the detention facility itself. The court noted that the mere existence of jail regulations with procedures guiding use of administrative segregation does not by itself suffice to create a liberty interest in remaining in the general prison population. (District of Columbia Detention Facility)

U.S. District Court
DUE PROCESS
PLACEMENT IN
SEGREGATION

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 placement in administrative segregation. The district court found that the prison inmate, who was placed in administrative segregation after an incident of insubordination to prison officials, received adequate due process. The inmate was given a written notice of the reason for his placement in segregation on the same day, and the notice set forth the portion of the state regulations governing such placement. (Kansas Department of Corrections)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

Ricker v. Leapley, 25 F.3d 1406 (8th Cir. 1994). A prisoner brought a civil rights action against state prison authorities, claiming deprivation of his constitutional rights when he was continued in segregation for having cocaine in his possession after the substance discovered in his cell was determined not to be cocaine. The U.S. District Court denied the qualified immunity claims of the warden and assistant warden and they appealete, the inmate's privacy rights were not violated, where none of the documents contained information concerning any inmates. The court also found that fact questions as to whether a published and posted rule existed that prohibited the inmate from keeping legal documents in his cell, whether the inmate was notified of any such rule and whether the inmate was present when the corrections officer in charge of the law library orally ordered the inmate law library assistants to remove all legal work, including other inmates' legal materials, from their personal possession and to store them in the library precluded summary judgment on the inmate's claim that he was disciplined for an unposted rule in violation of his due process rights. Defendants were entitled to qualified immunity on all claims except the claim that the inmate was disciplined for an unposted rule. (Washington Correctional Facility, New York)

U.S. District Court
DUE PROCESS
PLACEMENT
REVIEW

Sealey v. Coughlin, 857 F.Supp. 214 (N.D.N.Y. 1994) reversed in part 116 F.3d 47. An inmate brought a Section 1983 action alleging a due process violation in connection with his placement in involuntary administrative confinement. Both parties moved for summary judgment. The district court found that the inmate's Section 1983 claim against the Commissioner of the Department of Corrections did not allege a requisite level of personal involvement. It was not alleged that the Commissioner was grossly negligent in his supervision of the officer handling the inmate's appeal. In addition, the inmate was not entitled to the protections of a disciplinary proceeding and had no federal constitutional right to call witnesses. His due process rights were limited to some form of notice and an opportunity to be heard, which was provided at the disciplinary hearing. The court found that a genuine issue of material fact as to a prison official's involvement in the administrative segregation of the inmate for seven days following the issuance of a misbehavior report, during which time the inmate was not given an opportunity to be heard as required by due process, precluded summary judgment in favor of the official on the inmate's Section 1983 claim. The misbehavior report underlying the administrative confinement identified the official as the reporting officer, and there was no evidence showing his noninvolvement. The prison official was not entitled to qualified immunity. At the time in question, it was clearly established law that inmates had a constitutional right to be heard. On appeal the court granted the inmate the opportunity to develop additional information and remanded the case for further proceedings. (Auburn Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
EQUAL PROTEC-
TION
PLACEMENT

Templeman v. Gunter, 16 F.3d 367 (10th Cir. 1994). A prisoner brought an in forma pauperis civil rights action alleging that Colorado Department of Corrections (DOC) officials denied him due process and equal protection when they transferred him from the general population to administrative segregation. The U.S. District Court dismissed the action, and the prisoner appealed. The appeals court, affirming the decision, found that the inmate did not have a liberty interest in his prison classification under Colorado law.

The prisoner's equal protection claim that there were no relevant differences between him and other similarly situated inmates who were not placed in administrative segregation that reasonably might account for their different treatment was not plausible or arguable. Even though regulations offered a list of criteria to consider, the Colorado DOC officials had to weigh the various criteria and whatever else seemed relevant in making a qualitative judgment to classify an individual inmate. The DOC might classify inmates differently because of slight differences in their histories and because some seem to present more risk of future misconduct than others. (Colorado Centennial Correctional Facility, Colorado)

U.S. Appeals Court
LENGTH
REVIEW

Wright v. Smith, 21 F.3d 496 (2nd Cir. 1994). A prison inmate brought a Section 1983 action against the superintendent of the Attica Correctional Facility and the Commissioner of the New York Department of Correctional Services seeking damages on the grounds that he was confined in a special housing unit (SHU) for 67 days without a hearing. The U.S. District Court dismissed the complaint with prejudice and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that in view of the New York law requiring in mandatory terms that no administrative segregation last more than 14 days without a hearing, the inmate had a liberty interest in not being confined for an extended period without a hearing. (Attica Correctional Facility, New York)

1995

U.S. Appeals Court
DAYROOM
EXERCISE

Anderson v. County of Kern, 45 F.3d 1310 (9th Cir. 1995). Pretrial detainees and convicted prisoners brought an action against prison officials under Section 1983. The U.S. District Court required the officials to develop a policy regarding joint exercise and dayroom access for prisoners in administrative segregation. The prison officials appealed. The appeals court found that the district court erred by finding a constitutional violation and by issuing an injunction requiring prison officials to develop a policy. Although the relief ordered by the district court was extremely reasonable and deferential to the prison officials, making it somewhat difficult to reverse the district court's injunction, the confinement at issue did not rise to the level of deliberate indifference. (Kern County Jail, California)

U.S. District Court
DUE PROCESS
EXERCISE

Arce v. Walker, 907 F.Supp. 658 (W.D.N.Y. 1995). An inmate filed a § 1983 action alleging violation of his due process rights from his 19-day confinement in a special housing unit without the opportunity for an informal hearing. The inmate also alleged that he was denied exercise outside his cell for all but one day, in violation of his rights. The district court granted the defendants' motion for summary judgment, finding that the 19-day period of confinement did not deprive the inmate of a liberty interest conferred by the due process clause of the Fourteenth Amendment and thus, such confinement without the opportunity for a hearing did not violate the inmate's due process rights. Although state regulations required the provision of one hour of out-of-cell exercise daily, denial of this opportunity for 18 of the 19 days did not violate the inmate's due process rights, and denial of exercise did not constitute an Eighth Amendment violation. (Attica Correctional Facility, New York)

U.S. District Court
PRIVILEGES
RESTRICTIONS

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
RESTRICTIONS

Bryan v. Administrative of F.C.I. Otisville, 897 F.Supp. 134 (S.D.N.Y. 1995). An inmate brought a pro se action against a corrections officer and officials alleging denial of access to his personal prayer materials after a three-day administrative detention. The district court found that the inmate's allegations that he was deprived of his Quran and prayer beads for a period of three days were insufficient to state a First Amendment claim, given the legitimate security concerns arising in the prison context and the brief duration of the confiscation of the religious items. (Low Security Correctional Institution, Allenwood, Pennsylvania, and Federal Correctional Institution, Otisville, New York)

U.S. District Court
CONDITIONS
DUE PROCESS

Carter v. Carriero, 905 F.Supp. 99 (W.D.N.Y. 1995). An inmate filed a civil rights action against prison officials alleging violation of his due process rights in connection with a disciplinary hearing. The district court granted partial summary judgment for the

defendants. The inmate had been charged with misconduct, including violence, assault on a staff member, refusing a direct order, threats and a movement regulation violation. At a subsequent disciplinary hearing the charges were sustained and a penalty of 360 days confinement to the Special Housing Unit was imposed; 180 days were deferred and 90 were suspended. The court found that the inmate received due process--he received a copy of the formal charges against him, all eight witnesses requested by the inmate were called, and the inmate was allowed to review and comment upon all recorded witness testimony. (Attica Correctional Facility, New York)

U.S. District Court
PROTECTIVE CUSTODY CONDITIONS EXERCISE

Cody v. Jones, 895 F.Supp. 431 (N.D.N.Y. 1995). An inmate brought a § 1983 action alleging violation of his Eighth and Fourteenth Amendment rights. The district court held that although the inmate did not always receive all of the conditions of confinement for protective custody inmates, the conditions of his confinement did not present a dramatic departure from the basic conditions of his sentence so as to give rise to a due process violation. The inmate alleged that he did not always receive some of the conditions that were intended for protective custody inmates, such as two meals out-of-cell per day and three hours of out-of-cell time per day. (Great Meadow Correctional Facility, New York)

U.S. District Court
PSYCHIATRIC CARE
MEDICAL TREATMENT
REVIEW

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 that policies and practices regarding the housing of mentally ill inmates in administrative segregation and segregated housing units (SHU) violated the Eighth Amendment rights of those inmates. Evidence supported the finding that regulations providing for case review and psychological assessment of segregated inmates had little or no effect on actual practices. (California Department of Corrections)

U.S. District Court
LENGTH CONDITIONS REVIEW

Delaney v. Selsky, 899 F.Supp. 923 (N.D.N.Y. 1995). A prisoner brought a civil rights action against prison officials based on his contention that his due process rights were violated when he was held in a secured housing unit for an additional 197 days without an opportunity to be heard or adequate notice. The district court denied summary judgment for the defendants, finding that it was precluded by genuine issues of material fact regarding the prisoner's unusual height and his resulting physical problems from being held in a unit in which his bed was too small. The court noted that even if conditions of disciplinary confinement mirror those imposed on inmates in administrative segregation and protective custody, the inappropriate duration of disciplinary confinement may raise due process concerns. (Coxsackie Correctional Facility, New York)

U.S. District Court
ACCESS TO COURTS
LAW LIBRARY
ISOLATION

Ferreira v. Duval, 887 F.Supp. 374 (D.Mass. 1995). An inmate filed a § 1983 action seeking damages for alleged violations of his equal protection and due process rights connected with his discipline following a group demonstration. The district court granted summary judgment for the defendants on some of the claims. The court found that the difference between the penalty imposed on the plaintiff following a demonstration, and lesser penalties imposed on some of the other inmates who participated, did not violate the plaintiff's equal protection rights because the disciplinary hearing officer had properly concluded that the plaintiff was one of four inmates found to be leaders of the demonstration and the plaintiff had a greater number of prior similar disciplinary infractions than other participants. The court also noted that while other participants had accepted responsibility for the incident, the plaintiff had not. The court denied summary judgment on the issue of whether placement in the departmental disciplinary unit (DDU) was tantamount to "isolation," whether the policies of the Commissioner of Corrections

governing placement in the solid-door isolation cells for a continuous 30-day period for multiple offenses, and whether the 24-hour break rule still applied; the plaintiff alleged that his placement in DDU for 92 days violated Massachusetts statutes and regulations The court denied summary judgment on the issue of whether the plaintiff was denied his due process right of access to courts while serving his 92 day sentence in DDU, finding a need to determine if DDU inmates had available to them the services of a law librarian and inmate law clerks, and whether DDU inmates could obtain from them legal materials that they identified either by name or general topic. (MCI-Cedar Junction, Massachusetts)

U.S. District Court
HYGIENE

Geder v. Godinez, 875 F.Supp. 1334 (N.D. Ill. 1995). A prisoner brought a civil rights action against several prison officials. On a motion by the defendants for summary judgment, the district court found that the prisoner was not unconstitutionally denied access to personal property to take care of personal hygiene during confinement in segregation pending disciplinary charges. The deprivations only lasted 15 days and there was no evidence of resulting physical harm. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
PROTECTIVE CUSTODY

Golub v. Coughlin, 885 F.Supp. 42 (N.D.N.Y. 1995). An inmate who had been convicted of the murder of a 14-year-old girl whose body was found mutilated challenged the decision of prison officials to place him in involuntary protective custody (IPC). A state court ordered that the inmate be transferred to the general population and the inmate brought a federal civil rights action against prison officials. The district court granted summary judgment for the defendants, finding that the periodic reviews of the inmate's IPC status were meaningful. The court also found that the inmate's due process rights were not violated by his continued IPC status because the inmate was presented with a written explanation that his placement was due to the threat posed by his presence in the general population due to the heinous nature of his crime, and the inmate was provided with separate written explanations each time he protested his status. (Auburn Correctional Facility, New York)

U.S. District Court
PLACEMENT
DUE PROCESS

Hagan v. Tirado, 896 F.Supp. 990 (C.D.Cal. 1995). A federal prisoner brought a Bivens action against an employee at a federal penitentiary alleging that his placement in administrative detention violated the due process clause and constituted cruel and unusual punishment. The district court held that the employee's failure to provide an administrative hearing within seven days of placement in detention did not violate the prisoner's due process rights nor did it constitute cruel and unusual punishment. The court found that the failure of prison officials to comply with a federal regulation requiring a disciplinary hearing within eight days of an alleged misconduct does not alone constitute denial of due process. (United States Penitentiary, Lompoc, California)

U.S. District Court
LENGTH

Jones v. Moran, 900 F.Supp. 1267 (N.D.Cal. 1995). A prisoner brought a civil rights suit against prison officials based on his confinement in a secured housing unit beyond his scheduled release date. The district court granted summary judgment for the defendants, finding that procedures employed in the prisoner's segregation did not violate due process and his liberty interest was not infringed by retention in a secured housing unit beyond his scheduled release date. The prisoner was not transferred out of the secured housing unit until two months after a Classification Security Representative approved the move. (Secured Housing Unit at Pelican Bay, California)

U.S. District Court
LENGTH

Lee v. Coughlin, 902 F.Supp. 424 (S.D.N.Y. 1995). An inmate brought a pro se civil rights action against a hearing officer and corrections commissioner alleging deprivation of due process by denying him an employee assistant during a disciplinary hearing. The district court held that the inmate's confinement in disciplinary segregation for 376 days was an atypical and significant hardship for the purposes of establishing a liberty interest. The court held that the inmate did not receive meaningful assistance and did not waive his right to an employee assistant. The court found that the hearing officer's substitution of himself as the inmate's assistant did not fulfill due process concerns and that the hearing officer was not entitled to qualified immunity. However, the court found that the inmate failed to show any personal involvement of the commissioner as required for liability. (Coxsackie Correctional Facility, New York)

U.S. Appeals Court
LIBERTY INTEREST
DUE PROCESS

Luken v. Scott, 71 F.3d 192 (5th Cir. 1995). An inmate filed a § 1983 suit alleging his confinement in administrative segregation violated due process. The district court dismissed the suit as frivolous and the inmate appealed. The appeals court affirmed the lower court decision, finding that confinement in administrative segregation, without more, did not constitute deprivation of a constitutionally cognizable liberty interest. The court held that the speculative, collateral loss of the opportunity to earn good time credits did not create a constitutionally protected liberty interest. The court noted that the inmate

had received a hearing within ten days of being placed in administrative segregation and that his custodial status was reviewed every 90 days. (Texas Department of Criminal Justice)

U.S. District Court
CONDITIONS
ISOLATION
MEDICAL
TREATMENT

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
CONDITIONS
RESTRICTIONS
EXERCISE
HYGIENE

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 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 the defendants were entitled to qualified immunity on the inmate's claim the he was denied opportunities to exercise; the court noted that the inmate had the opportunity to exercise in his cell, or to walk from his cell three times per week for a ten minute shower period while in a disciplinary segregation unit, and he was only deprived of outdoor exercise continuously

for a period of four weeks at the most, which was insufficient to support an Eighth Amendment claim. 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. 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. (Eastern Oregon Correctional Institution)

U.S. District Court
DUE PROCESS

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 being placed in administrative segregation did not violate the inmate's due process rights where officials provided a presegregation hearing at which the inmate could have presented his views. The court found that disciplinary hearings did not subject the inmate to double jeopardy, although he had been found guilty and sentenced at a previous hearing, where the official at the previous hearing had withdrawn the finding of guilt and the sentence. The court noted that prison disciplinary hearings are not part of a criminal prosecution and therefore do not implicate double jeopardy concerns. 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
DUE PROCESS
LENGTH

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. Appeals Court
DUE PROCESS

Mujahid v. Meyer, 59 F.3d 931 (9th Cir. 1995). An inmate filed a § 1983 suit against prison officials alleging violation of his constitutional rights by confining him to disciplinary segregation for speaking with an inmate from another residence area. The district court granted summary judgment for the officials and the appeals court affirmed, finding that prison regulations did not create a liberty interest that would entitle the inmate to due process protection. (Halawa Confinement Facility, Hawai'i)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Nettles v. Griffith, 883 F.Supp. 136 (E.D. Tex. 1995). A prisoner who was placed without a hearing in administrative segregation in a section of the jail designated primarily for the mentally imbalanced brought a Section 1983 action against the county sheriff and other officials. The district court found that the prisoner had a protected liberty interest in remaining in the general jail population, as opposed to administrative segregation. A jail official testified that, under the jail's rules, regulations, and practices, a notice and a hearing preceding administrative segregation was mandatory or expected. However, the prisoner's consultation with a jail official prior to being placed in administrative segregation did not constitute a hearing comporting with due process requirements. The official did not consider her discussion with the prisoner to be a disciplinary hearing, the prisoner never received even an informal notification of charges against him, and the nature of the charges was uncertain even at the time of the trial. Evidence was sufficient to support a finding that a police lieutenant ordered the prisoner to administrative segregation, and thus committed a deliberate and intentional act within the purview of Section 1983. Although the lieutenant stated that she did not order the prisoner to administrative segregation, her statement conflicted with another officer's testimony and with the lieutenant's earlier testimony, and another officer testified that he understood that the prisoner was being placed in administrative segregation on the lieutenant's

orders. The district court found that the appropriate damage award for the prisoner was $50 per day of segregation. (Jefferson County Detention Center, Beaumont, Texas)

U.S. District Court
REGULATIONS

Phipps v. Parker, 879 F.Supp. 734 (W.D.Ky. 1995). An inmate brought a civil rights action against prison officials, alleging that he was an orthodox Hasidic Jew and that the defendants violated his First Amendment free exercise rights by forcing him to receive a short haircut while in a segregation unit pursuant to institutional policy. The district court found that the safety concerns the defendants offered were sufficient to justify the policy. The prison officials' ability to quickly identify inmates and protect prison guards and inmates from hidden contraband were matters of paramount concern sufficient to justify small intrusions on the prisoners' free exercise rights, and cutting the inmates' hair short appeared to be the only plausible way to meet those safety concerns. In addition, short hair promotes cleanliness and sanitation. It also removes tension between guards and inmates if long hair had to be searched and prevents a disguise in case of an escape. (Kentucky State Penitentiary)

U.S. District Court
CONDITIONS

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 alleged that temperatures in his cell placed his health and well-being at risk; the court said these allegations were sufficient to state a civil rights claim even if the inmate did not allege that he suffered frostbite, hypothermia or similar inflictions. The court noted that the inmate claimed he had informed facility personnel about these conditions but nothing was done to remedy the problem. 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. 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
DUE PROCESS

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. (Mid-Orange Correctional Facility, New York)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Rush v. McKune, 888 F.Supp. 123 (D.Kan. 1995). An inmate filed a civil rights action against prison officials alleging violation of his rights by his placement in administrative segregation. The district court dismissed the action, finding that prison regulations calling for a hearing, and customs that disciplinary hearings were ordinarily held not less than 24 hours nor more than 7 days after an incident report is issued, did not create a protected liberty interest. (Lansing Correctional Facility, Kansas)

U.S. Supreme Court
PLACEMENT
DUE PROCESS
CONDITIONS

Sandin v. Conner, 115 S.Ct. 2293 (1995). In a 5 to 4 decision, the Court ruled that prisoners have less claim to limited due process liberty interests than previous Court decisions have granted. An inmate sued prison officials alleging that they deprived him of procedural due process when an adjustment committee refused to allow him to present witnesses during a disciplinary hearing. The inmate was sentenced to segregation for misconduct. The U.S. District Court granted summary judgement for the prison officials, but the appeals court reversed, finding that the inmate had a liberty interest in remaining free of disciplinary segregation and ruling that there was a disputed question of fact whether the inmate had received all of the due process due under Wolff v. McDonnell. On

appeal, the U.S. Supreme Court held that neither the Hawaii prison regulation nor the Due Process Clause itself afforded the inmate a protected liberty interest that would entitle him to the procedural protections set forth in Wolff. The Court found that due process liberty interests created by prison regulations will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the due process clause by its own force, nonetheless imposes atypical and significant hardship in relation to the ordinary incidents of prison life. The Court noted that the inmate's confinement in segregated confinement did not present the type of atypical significant deprivation in which a State might conceivably create a liberty interest, because at the time of his punishment, disciplinary segregation mirrored those conditions imposed upon inmates in administrative segregation and protective custody. The Court also found that the misconduct finding was not likely to affect his parole status and therefore the inmate was not entitled to the Due Process Clause's procedural guarantees that would apply when an inmate's duration of sentence is affected. The majority found that after Meachum v. Fano the Court "has strayed from the real concerns undergirding the liberty interest protected by the Due Process Clause." The Court stated that in Meachum and later cases the focus of liberty interest inquiries was impermissably shifted from one based on the nature of the deprivation to one based on the language of a particular regulation, encouraging prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges. (Hawaii Correctional Facility, Oahu)

U.S. District Court
DUE PROCESS

Schmelzer v. Norfleet, 903 F.Supp. 632 (S.D.N.Y. 1995). An inmate brought a § 1983 action against a correctional officer seeking compensatory and punitive damages arising from alleged violation of his procedural due process rights. The district court found that the correctional officer who placed the inmate in keeplock without filing a misbehavior report, with the result that a review officer never advised the inmate of charges against him and no hearing was scheduled, was personally involved as required to support the inmate's § 1983 claim against him. But the court held that the inmate's 11-day confinement in keeplock did not constitute an atypical, significant hardship implicating a protected liberty interest. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
LENGTH
LIBERTY INTEREST

Sheehan v. Beyer, 51 F.3d 1170 (3rd Cir. 1995). A state prisoner brought a civil rights action against state prison officials. The U.S. District Court granted summary judgment for the prison officials and the prisoner appealed. The appeals court found that the prisoner had a protected liberty interest in being returned to the general population within a reasonable time after the dismissal of a disciplinary charge against him. The court also found that a disputed issue of material fact, precluding summary judgment for the prison officials, existed as to whether vacant cells were available in the general population unit while the prisoner was retained in close-custody after dismissal of the disciplinary charge against him, and, thus, whether the prisoner's right to due process was violated by his continued retention in close-custody. (New Jersey State Prison at Trenton)

U.S. District Court
DUE PROCESS

Thomas v. Newkirk, 905 F.Supp. 580 (N.D.Ind. 1995). A state inmate filed a habeas corpus action alleging that he had a liberty interest in staying in the general prison population, and that a conduct adjustment board decision placing him in disciplinary segregation failed to comport with due process. The district court granted, in part, the defendant's motion to dismiss, finding that a full Sixth Amendment right to confront and cross-examine witnesses clearly did not apply in prison disciplinary proceedings. The court also found that the conduct adjustment board was not required to find that a preponderance of evidence supported a finding of guilt in order for a disciplinary sentence to be constitutional. But the court was "unconvinced that the sole answer to the claims in this petition is simply an incantation of Sandin." The court found that there may not be a liberty interest in disciplinary segregation of six months or less, but it is open for debate as to whether segregation for three years presents the type of atypical significant deprivation in which a state might create a liberty interest. (Indiana State Prison)

U.S. District Court
PLACEMENT IN SEGREGATION

Uzzell v. Scully, 893 F.Supp. 259 (S.D.N.Y. 1995). A prisoner brought a civil rights action alleging violation of his due process rights when he was confined in "keeplock" during an investigation into an alleged disciplinary violation. The district court held that the pre-hearing confinement of the prisoner did not trigger his procedural due process rights and that the prisoner had no liberty interest in not being confined pending the investigation. (Green Haven Correctional Facility, New York)

U.S. District Court
ACCESS TO COURTS
LAW LIBRARY

Walters v. Edgar, 900 F.Supp. 197 (N.D.Ill. 1995). Prisoners brought a class action against a department of corrections alleging denial of access to courts. The district court found that the department violated segregated inmates' rights by instituting what was essentially a "runner" system, whereby the inmates had no direct access to library books.

The court noted that at least one-third of the inmates were unable to read and comprehend legal materials and that they were provided with books and materials they requested by untrained clerks. The court also noted that changes that were made by the department would be given little weight as there was no reason to believe that any improvements made would not be changed back after the case was closed. The court identified the system by which the department provided segregated inmates in a female facility as constitutionally sufficient access to courts by sending two legally trained law clerks to the segregation unit three times each week for as long as they were needed to provide substantive help, and by having a paralegal provide real supervision to the law clerks and help the inmates directly. (Five Maximum Security Institutions, Illinois Department of Corrections)

U.S. District Court
EQUAL PROTECTION
PROTECTIVE CUSTODY
RELIGIOUS SERVICES
RESTRICTIONS

Weir v. Nix, 890 F.Supp. 769 (S.D.Iowa 1995). A fundamentalist Christian inmate in protective custody sued prison officials for violation of § 1983 and the Religious Freedom Restoration Act (RFRA). The court held that group worship services led by a protestant inmate who was a fundamentalist Christian adequately protected the inmate's right to free exercise of religion and equal protection, and the three hours per week provided for group worship afforded a reasonable opportunity for the inmate to exercise his religion. The court found that the inmate was not entitled to damages with respect to the former practice of allowing only one hour of group worship per week because RFRA defendants cannot be sued for money damages in their official capacities. The court also found that the fact that the protective custody inmate could not attend group worship services on Sunday did not infringe upon or substantially burden his exercise of religion, nor did denying the inmate permission to take his Bible into an exercise yard constitute denial of equal protection or violation of his right to free exercise of religion. (Iowa State Penitentiary)

U.S. District Court
MEDICAL TREATMENT

Westbrook III v. Wilson, 896 F.Supp. 504 (D.Md. 1995). An inmate sought monetary, injunctive and declaratory relief, alleging that placing him in medical segregation was unconstitutional. The district court found that placing the inmate in medical segregation for refusing to take a test for tuberculosis was reasonable as the test was minimally intrusive and it was related to a legitimate prison management goal. (Maryland Department of Public Safety and Correctional Services)

U.S. Appeals Court
DUE PROCESS
PROTECTIVE CUSTODY
ISOLATION

Williams v. Ramos, 71 F.3d 1246 (7th Cir. 1995). An inmate sued prison officials alleging due process and Eighth Amendment violations. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed the lower court decision. The court found that the inmate's 19-day segregation in a closed-front cell for 24 hours per day was not an atypical, significant deprivation that violated the inmate's rights. While in segregation the inmate was not allowed to participate in activities available to the general population, lacked much contact with other inmates or staff, and was handcuffed whenever he left his cell. The inmate had a medical certificate stating he should be assigned a lower bunk; prison officials had offered him an upper bunk in a protective custody unit or a lower bunk in a segregation unit. The inmate chose the lower bunk. The court found that prison officials did not cause the inmate needless pain and suffering nor did they place him in an impossible situation in which he could not avoid pain or permanent injury. (Stateville Correctional Center, Illinois)

U.S. District Court
LIBERTY INTEREST
PLACEMENT IN SEGREGATION

Williams v. Sweeney, 882 F.Supp. 1520 (E.D. Pa. 1995). An inmate brought an action against a warden alleging constitutional violations in connection with the warden's reclassification of the inmate to administrative segregation. On the warden's motion for summary judgment, the district court found that the warden's power to place the inmate in administrative segregation was wholly unchecked and, thus, the state had created no liberty interest and, consequently, the inmate had no due process right to a hearing concerning placement and retention in administrative segregation. Prison regulations authorized the warden to place a prisoner in administrative segregation for any of several enumerated reasons, "or for reasons as determined by the Warden." (Lehigh County Prison, Pennsylvania)

U.S. District Court
RESTRICTIONS
WORK

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)

U.S. District Court
CONDITIONS

Bracewell v. Lobmiller, 938 F.Supp. 1571 (M.D.Ala. 1996). Female inmates in a segregation unit challenged their conditions of confinement by filing a § 1983 action. The district court held that unconstitutional conditions were created by the presence of an inmate who continually yelled and threw things and that prison officials had at one time been deliberately indifferent to these conditions. However, the court found that the inmates failed to establish that prison officials continued to be deliberately indifferent and the inmates were therefore not entitled to injunctive relief. The unconstitutional conditions were created by an inmate who repeatedly and erratically engaged in outbursts of disgusting and disruptive behavior, which included yelling, screaming, hollering, banging, cursing, and throwing liquids, unclean sanitary napkins, and feces. While the officials admitted that they were initially aware of the problems but took no actions to abate them, they eventually corrected the problem by medicating the inmate and moving other prisoners away from her. (Julia Tutwiler Prison for Women, Alabama)

U.S. District Court
RECREATION
MEDICAL
TREATMENT

Brewton v. Hollister, 948 F.Supp. 244 (W.D.N.Y. 1996). An inmate filed suit under § 1983 alleging violation of his Eighth and Fourteenth Amendment rights as the result of his confinement in a prison's special housing unit (SHU). The district court granted summary judgment for the defendants, finding that limitation of recreation to one hour daily and three incidents of denial of medical treatment did not amount to an atypical and significant hardship. The inmate was confined to SHU for 74 days. (Orleans Correctional Facility, New York)

U.S. District Court
LIBERTY INTEREST

Bruns v. Halford, 913 F.Supp. 1295 (N.D.Iowa 1996). A prisoner sued prison officials alleging violation of his due process rights when he was placed in segregation after refusing to identify the perpetrator of an inmate-on-inmate assault that he witnessed. The district court granted summary judgment for the defendants, finding that no liberty interest was violated by the inmate's segregation--whether it was administrative or disciplinary. The court also ruled that the defendants were entitled to qualified immunity. The court found that the inmate's confinement had the legitimate purpose of managing a prisoner who was impeding the investigation of an assault. (Iowa Mens Reformatory)

U.S. District Court
PLACEMENT
FAILURE TO PROTECT

Cephas v. Truitt, 940 F.Supp. 674 (D.Del. 1996). A pretrial detainee who had been placed in administrative segregation for 18 days pending a disciplinary hearing brought a federal civil rights action against a jail official, alleging violation of his due process rights. The district court granted summary judgment to the defendants, finding that the imposition of administrative segregation prior to a disciplinary hearing did not violate a protected liberty interest. The court held that the 15-day isolation sanction given to the detainee following a disciplinary hearing did not violate a protected liberty interest and that the punishment was reasonably related to legitimate objectives and was permissible; nothing indicated that the sanction was arbitrary or disproportionate to the offense. The court also found that the detainee, who was assaulted by other inmates while in administrative segregation, failed to establish that the jail official had been deliberately indifferent to the risk that the detainee would be assaulted. According to the court, nothing indicated that the official was actually aware of any risk prior to the assault or that the risk was apparent, nor that the delay of the disciplinary hearing during which time the detainee was kept in segregation, was unreasonable. (Sussex Correctional Institution, Delaware)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
PROTECTIVE
CUSTODY
RESTRICTIONS
ACCESS TO COURTS
RECREATION

Christianson v. Clarke, 932 F.Supp. 1178 (D.Neb. 1996). A state inmate brought a § 1983 action against prison officials alleging violation of his Fourth Amendment due process rights. The inmate had been placed on immediate segregation, administrative confinement, and protective custody pending investigation of an assault charge. The district court dismissed the case finding the inmate failed to allege facts sufficient to implicate a state created liberty interest and noting that even if a liberty interest had been created the inmate had received all process due to him. The inmate did not allege that he faced the possibility of losing good time credits or that his release date could be affected by administrative segregation. The inmate was afforded a hearing before each classification decision and the inmate was given notice prior to each hearing and was given an opportunity to make a statement at each hearing. The court also found that the temporary denial of the inmate's privileges of free access to a law library, circulating library, yard, central dining, and canteen did not present the type of atypical, significant deprivations that would trigger protection under the due process clause. (Lincoln Correctional Center, Nebraska)

U.S. District Court
CONDITIONS
RESTRICTIONS
DUE PROCESS

Everson v. Nelson, 941 F.Supp. 1048 (D.Kan. 1996). An inmate brought a civil rights action against prison officials challenging his assignment to segregated confinement. The district court dismissed the complaint, finding that no pre-transfer hearing was required before the inmate was transferred. The court also found that the inmate's allegations of duress, psychological stress and retrogression of human development based on his assignment to administrative segregation did not violate the Eighth Amendment. (El Dorado Correctional Facility, Kansas)

U.S. Appeals Court
CONDITIONS
WORK
LIBERTY INTEREST

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
ACCESS TO COURTS

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 that some female inmates in Michigan did not receive legal materials and assistance sufficient to afford them meaningful access to courts. Some classes of inmates were provided access only to mini-law libraries that were suitable for conducting the most basic legal work, available paralegals were subject to the same restrictions on law library accesss as inmates, the paging system for obtaining legal materials limited their availability and caused delay, some mini-law libraries did not even contain basic materials and could be used for only one hour at a time, and some inmates were forced to choose between use of the law library and other prison activities. The court also found that prison segregation policies and the manner in which they were applied to restrict law library access for some classes of female inmates was not reasonably related to legitimate penological interests. (Michigan Department of Corrections)

U.S. Appeals Court
ACCESS TO COURTS
RESTRICTIONS
PROGRAMS
GOOD TIME

Higgason v. Farley, 83 F.3d 807 (7th Cir. 1996). A prisoner filed a civil rights action challenging his placement in a segregation unit. The district court dismissed the prisoner's claim for injunctive relief and granted summary judgment to the defendants. The prisoner appealed. The appeals court affirmed in part, reversed and remanded in part, and vacated and remanded in part. The appeals court found that restrictions on the prisoner's movement in the segregation unit were not an atypical and significant hardship in violation of the Eighth Amendment. Segregated prisoners generally had to stay in the vicinity of their cells and could never enter another prisoner's cell, and the unit was regularly put on lockdown status more frequently and for longer periods of time than the general population. The court also ruled that denial of access to educational programs, which resulted from the prisoner's placement in the segregation unit, did not infringe on a protected liberty interest despite the contention that he was thus deprived of an opportunity to earn good time credits. The court noted that even if the prisoner had been given the opportunity to participate in programs, it was not inevitable that he would complete an educational program and earn good time credits. However, the appeals court found that material fact issues precluded summary judgment on the prisoner's claim that he was transferred to the segregation unit because he filed lawsuits on his own and assisted other prisoners in filing lawsuits. (Indiana State Prison)

U.S. Appeals Court
EQUAL PROTECTION
EXERCISE
PRIVILEGES

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. Appeals Court
DUE PROCESS
CONDITIONS

Isby v. Clark, 100 F.3d 502 (7th Cir. 1996). An inmate filed a § 1983 action alleging violation of the Eighth and Fourteenth Amendments, alleging that conditions of his restrictive segregation constituted cruel and unusual punishment and that his transfer to the unit violated his due process rights. The district court entered judgment in favor of the defendant, but the appeals court remanded the case, finding the need for the district court to enter more precise findings on contested issues about alleged inhumane conditions as to temperature, sanitation and ventilation. The appeals court also found that the inmate's transfer to the more restrictive unit without prior notice or hearings did not violate his procedural due process rights. (Indiana State Prison, Michigan City, Indiana)

U.S. District Court
MEDICAL
TREATMENT
DUE PROCESS

Jihad v. Wright, 929 F.Supp. 325 (N.D.Ind. 1996). An inmate brought a § 1983 action against the superintendent of a maximum control complex after the inmate was placed on restrictive medical separation status for refusal to take a tuberculosis (TB) screening test by injection. The district court held that placement of the inmate in medical isolation was not the least restrictive means of furthering the state interest in preventing the spread of TB; prison officials could have treated the inmate as an inmate at risk of developing active TB by requiring him to submit to periodic chest x-rays or sputum samples. (Maximum Control Complex, Indiana)

U.S. District Court
LIBERTY INTEREST
LENGTH
CONDITIONS
TELEPHONE

Jones v. Kelly, 937 F.Supp. 200 (W.D.N.Y. 1996). A prison inmate who had been confined to a special housing unit for 191 days brought a civil rights action alleging violation of his liberty interests. The district court granted summary judgment for the defendants, finding that the period of punitive confinement, during which the inmate was denied telephone privileges, did not violate any liberty interest protected by the due process clause. The court noted that the length of confinement in a special housing unit is not necessarily dispositive of whether a liberty interest has been implicated. (Attica Correctional Facility, New York)

U.S. District Court
PROTECTIVE
CUSTODY

Jones v. Russell, 950 F.Supp. 855 (N.D.Ill. 1996). A prisoner filed a § 1983 complaint against prison officials for denying him protective custody and sought leave to proceed in forma pauperis. The district court dismissed the complaint, finding that the prisoner failed to state a claim absent any allegation of a history of assaults against him or of a particular vulnerability. The court noted that in determining under the Prison Litigation Reform Act (PLRA) whether to dismiss, a motion to dismiss may be granted only if the court concludes that no relief could be granted under any set of facts that could be proved consistent with the plaintiff's allegations. (Stateville Correctional Center, Illinois)

U.S. District Court
PLACEMENT

Leacock v. DuBois, 937 F.Supp. 81 (D.Mass. 1996). An inmate brought an action against corrections officials regarding the circumstances of his administrative segregation and disciplinary punishment. The district court held that the fact that the inmate could not call a former inmate as a witness in a disciplinary hearing in which 365 days of the inmate's good time was forfeited did not raise due process concerns. The court also held that denying the inmate the opportunity to review written evidence against him before the disciplinary hearing did not raise due process concerns. (MCI-Norfolk, Massachusetts)

U.S. District Court
DUE PROCESS

McAllister v. Zydel, 929 F.Supp. 102 (W.D.N.Y. 1996). An inmate brought a § 1983 action against prison officials arising from the inmate's 15-day confinement in keeplock status. The district court held that the inmate was not deprived of a protected liberty interest because the confinement did not exceed the inmate's sentence in such an unexpected manner as to give rise to an inherent due process violation. (Attica Correctional Facility, New York)

U.S. Appeals Court
REGULATIONS
RESTRICTIONS

McGuinness v. Dubois, 75 F.3d 794 (1st Cir. 1996). An inmate filed a pro se action challenging his treatment by guards and the conduct of his disciplinary hearing. The district court found that the prison hearing officer impermissibly denied the inmate's request to call witnesses and granted summary judgment for the defendants on the issue of money damages. The appeals court affirmed in part and reversed in part, finding that the denial of the plaintiff's request for the live testimony of other inmates did not violate due process, even if the denial was based on a general policy of denying live testimony of general population inmates at hearings held in a segregation wing. (Massachusetts Correctional Institute--Cedar Junction)

U.S. Appeals Court
ACCESS TO COURTS
HYGIENE

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
PROTECTIVE CUSTODY
ACCESS TO COURTS
CONDITIONS

Nami v. Fauver, 82 F.3d 63 (3rd Cir. 1996). Inmates who were housed under protective custody at a youth correctional facility brought a § 1983 action against corrections officials, alleging they were subjected to cruel and unusual punishment and were denied access to courts. The district court dismissed the complaint and the inmates appealed. The appeals court reversed the lower court decision, finding that allegations were sufficient to state claims for cruel and unusual punishment and denial of access to courts. The inmates alleged that double celling of inmates in the housing unit resulted in increased assaults and psychological stress, that unit inmates were required to spend 24 hours a day in their cells except for limited time for out of cell recreation, visits and job assignments. They also alleged that inmates in the general population had more out of cell recreation time. The inmates alleged that their access to drug and alcohol programs, as well as jobs and educational programs, was more restricted. Unit inmates were also required to wear a painful device when transported to other locations. The inmates had written to prison administrators about each of the matters set forth in their complaint. The inmates alleged that they were denied access to paralegals or other persons trained in the law and that the law librarian refused to help protective custody inmates prepare habeas corpus petitions or civil complaints, and the librarian attempted to frustrate the inmates' action by delaying the return of documents and failing to make copies of legal documents. The inmates alleged that they were effectively prevented from helping each other with legal matters as the result of a facility policy that prohibits them from talking to each other through doors or passing items between cells. The inmates also alleged that they were effectively prevented from submitting written requests for specific legal materials. (Wagner Youth Correctional Facility, New Jersey)

U.S. District Court
CONDITIONS

Neal v. Clark, 938 F.Supp. 484 (N.D.Ill. 1996). A prisoner brought a § 1983 action against prison officials alleging violation of his Eighth Amendment rights as the result of his conditions of confinement. The district court held that the prisoner's conditions of confinement in his segregation cell were not sufficient to support an Eighth Amendment violation. The prisoner complained that during his 20-day confinement in a segregation cell there was no hot water and the toilet ran constantly and did not flush properly. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
RETALIATION

Ochs v. Thalacker, 90 F.3d 293 (8th Cir. 1996). A state inmate filed a § 1983 action against prison officials, alleging violation of his due process rights. The inmate had requested that he be housed with persons of his own race, claiming a religious motivation, and officials refused his request. The inmate also alleged deliberate indifference to his allergic reaction to metal handcuffs. The district court dismissed the complaint and the appeals court affirmed. The court held that officials had legitimate reasons for rejecting the inmate's request for segregated housing, as they believed that random cell assignment lessened racial tensions and promoted security. The court found that officials did not subsequently assign him to administrative segregation in retaliation for his request; evidence showed that the officials segregated the inmate to protect him and others because he had identified himself as a racist at a time of racial tension in the prison. The court

also held that the inmate failed to prove that he had a serious medical need, as he experienced only a mild discomfort from two or three brief exposures to metal handcuffs, and he was issued new protective coverings as soon as he requested help from a medical professional. (Iowa Mens Reformatory)

U.S. Appeals Court
DUE PROCESS

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. District Court
DUE PROCESS

Sandefur v. Lewis, 937 F.Supp. 890 (D.Ariz. 1996). A state inmate brought a § 1983 action asserting violation of his due process rights when he was placed in administrative segregation without a hearing, and when his security status was reclassified. The district court held that confinement in administrative segregation for 141 days did not implicate a due process liberty interest, and that security reclassification did not implicate due process. (State Prison Complex in Tucson, Arizona)

U.S. District Court
DUE PROCESS

Speed v. Stotts, 941 F.Supp. 1051 (D.Kan. 1996). An inmate brought a § 1983 action against corrections officials alleging violation of his constitutional rights by confining him in administrative segregation without providing notice of any disciplinary charges or a hearing on such charges. The district court granted summary judgment in favor of the officials, finding that the inmate's placement in administrative segregation did not violate the inmate's due process rights absent any allegations that segregation posed an atypical or significant hardship on the inmate. (Lansing Correctional Facility, Kansas)

U.S. District Court
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. District Court
PLACEMENT
DUE PROCESS

Walker v. Mahoney, 915 F.Supp. 548 (E.D.N.Y. 1996). An inmate in a county correctional facility brought a § 1983 civil rights action against a sheriff and corrections officials, alleging deprivation of liberty without due process. A shank had been discovered during a search of the inmate's cell and he was placed in administrative segregation. He was subsequently found guilty of the disciplinary charges against him and he was ordered to serve five days of punitive segregation. Dismissing the case, the district court found that segregating the inmate for 23 days in disciplinary and administrative segregation without the opportunity for a hearing for 18 of those days did not violate the inmate's due process rights. The court ruled that the abridgement of the inmate's due process rights of access to court, resulting from his segregated confinement for 23 days, was de minimis and was therefore insufficient to sustain a cause of action. (Suffolk County Correctional Facility, New York)

U.S. District Court
RECREATION

Watts v. Ramos, 948 F.Supp. 739 (N.D.Ill. 1996). An inmate brought a § 1983 action against the manager of a prison's segregation unit, alleging that the manager violated the inmate's Eighth Amendment rights by depriving him of all recreation time for over one year. The district court denied the manager's motion for summary judgment, noting that prisoners had a clearly established right to some recreation in a one-year period during the time the inmate was confined in the segregation unit. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Wycoff v. Nichols, 94 F.3d 1187 (8th Cir. 1996). A prison inmate filed a § 1983 action against prison officials after his disciplinary sanction was reversed in administrative appeal. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that any due process violation resulting from the disciplinary committee's initial decision to sanction the inmate was cured by the administrative reversal of the inmate's case. The court also found that the inmate did not have a protected liberty interest in avoiding administrative segregation because conditions

of his segregation were not atypical and were not a significant departure from the basic conditions of his confinement. (Iowa State Penitentiary)

1997

U.S. Appeals Court
CONDITIONS

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
EXERCISE

Davidson v. Coughlin, III, 968 F.Supp. 121 (S.D.N.Y. 1997). A state prisoner brought § 1983 actions against corrections officials alleging constitutional violations as the result of depriving him of outdoor exercise. The district court held that the inmate's rights were not violated when officials failed to provide the inmate at least one hour a day of outdoor exercise for several days during a 30-day period. The court also found that the prisoner was provided more than the amount of exercise required by the Eighth Amendment during a 4½ month period of segregation because deprivations were of limited duration and the inmate was allowed to participate in other out-of-cell activities and had opportunities for in-cell exercise. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
MAIL
OUTGOING MAIL

Davidson v. Mann, 129 F.3d 700 (2nd Cir. 1997). An inmate brought a § 1983 action against corrections officials alleging that a prison regulation that limited access to stamps for nonlegal mail violated their First Amendment rights. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court found that a regulation that limited inmates' access to stamps for nonlegal mail to 100 per month, or 50 for inmates in special housing, was rationally related to institutional interests in avoiding a backlog of mail, allocating prison staff efficiently, and limiting thefts and disputes. The regulation allowed inmates to show extenuating circumstances and it prevented delays. The court noted that the inmate did not make specific allegations that the regulation ever actually prevented him from purchasing stamps, much less from sending outgoing nonlegal mail. (New York State Department of Correctional Services)

U.S. Appeals Court
CONDITIONS

Dixon v. Godinez, 114 F.3d 640 (7th Cir. 1997). A state prisoner brought a § 1983 action against prison officials alleging that conditions of his confinement in protective custody violated the Eighth Amendment. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that poor ventilation in the inmate's cell during the summer did not violate the Eighth Amendment, as the cell had a window which opened and an electric fan, and a small "chuckhole" in the door which provided some cross-ventilation. The prisoner's claims that the rank air in the cell exposed him to diseases and caused respiratory problems was not backed by medical or scientific sources. The appeals court found that summary judgment was precluded by issues of fact as to whether clothes and bedding provided to the prisoner adequately protected him from cold temperatures in his cell in the winter. The court noted that to determine whether low temperatures in the cell violated the prisoner's Eighth Amendment rights, the court should examine such factors as the severity of the cold, its duration, whether the prisoner has an alternative means to protect himself from cold, the adequacy of such alternatives, and whether the prisoner must endure other uncomfortable conditions as well as cold. (Stateville Correctional Center, Illinois)

U.S. District Court
RECREATION
WORK

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. Appeals Court
EQUAL PROTECTION
DUE PROCESS
LENGTH

Griffin v. Vaughn, 112 F.3d 703 (3rd Cir. 1997). A state prisoner who had been held in administrative custody for 15 months after he was suspected of having committed rape of a female prison guard brought a civil rights suit against prison employees and officials. The district court dismissed the complaint with respect to some defendants and granted summary judgment in favor of the other defendants. The inmate appealed and the appeals court affirmed, finding that the prisoner's 15-month period of confinement did not impose an atypical and significant hardship on the prisoner, The court also found that confining a prisoner who was suspected of misconduct longer than prisoners who had been found to have committed misconduct did not violate the equal protection clause. According to the court, the fact that an inmate classified to administrative custody because of the need for "increased control" might be required to stay there as long as the need continues and is not inconsistent with the fact that an inmate punished for misconduct might receive a shorter period of confinement. (State Correctional Institute, Graterford, Pennsylvania)

U.S. District Court
CONDITIONS
ISOLATION

Leacock v. DuBois, 974 F.Supp. 60 (D.Mass. 1997). An inmate housed in disciplinary confinement sued corrections officials challenging his conditions of confinement. The district court held that the inmate's conditions of confinement did not constitute cruel and unusual punishment in violation of the Eighth Amendment. The court noted that the prisoner had daily exercise, the ability to earn telephone privileges and in-person visits, and access to mental health care and social interaction. The court found that the inmate was not subjected to "isolation" within the meaning of a statute that limited isolation confinement to 15 days per offense because the inmate could earn television, radio and visitation privileges, and could communicate with other inmates during exercise periods. (Department Disciplinary Unit, Massachusetts Department of Corrections)

U.S. Appeals Court
LENGTH
LIBERTY INTEREST

Mackey v. Dyke, 111 F.3d 460 (6th Cir. 1997). A state inmate brought a § 1983 action against state corrections officials alleging violation of his due process right when they failed to reclassify him promptly after he was released from administrative segregation. The district court granted summary judgment for the officials and the inmate appealed. The appeals court reversed and remanded, and the district court again granted summary judgment for the officials. The appeals court affirmed, finding that because an inmate's detention in administrative segregation did not create a liberty interest, failure to release him to the general population upon his release from segregation did not amount to a procedural due process violation. The court noted that the delay in transferring the inmate after his release was understandable given the corrections system's need to find him a bed at a suitable security level institution in an overcrowded system. (Michigan Department of Corrections)

U.S. Appeals Court
PROTECTIVE CUSTODY
LENGTH
WORK

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
CONDITIONS
DUE PROCESS

Porter v. Coughlin, 964 F.Supp. 97 (W.D.N.Y. 1997). A prisoner brought a civil rights action against prison officials alleging violation of his Eighth and Fourteenth Amendment rights. The district court held that the prisoner received the process he was due before he was sentenced to a Special Housing Unit for 36 months. (Sing-Sing Correctional Facility, New York)

U.S. District Court
CONDITIONS
HYGIENE
MEDICAL TREAT.

Reid v. Artus, 984 F.Supp. 191 (S.D.N.Y. 1997). An asthmatic inmate filed a § 1983 suit against a prison superintendent to recover for denial of running water and medication during his confinement in keeplock. The district court granted summary judgment for the superintendent, finding that denial of running water in his cell, and of a breathing treatment for one night, did not violate the Eighth Amendment. The court noted that the inmate received water when it was needed, was able to shower in accordance with keeplock rules, refused an offer to be admitted to the medical clinic on the first day the water was turned off, and had his pills and inhaler in his cell at all times. The inmate had alleged that he was denied running water and asthma medication for eight days. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
FEES
MEDICAL COSTS

Reynolds v. Wagner, 128 F.3d 166 (3rd Cir. 1997). Inmates brought a class action suit against a county prison and warden challenging the constitutionality of a program under which the prison charged inmates a small fee ($5) when they sought certain types of medical care. The district court entered a judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the program was not per se unconstitutional under the Eighth Amendment and did not violate the Eighth Amendment as implemented. The court found that Spanish-speaking inmates did not receive deficient notice of the program due to the absence of a written Spanish translation of the program description. The program was explained in Spanish by officers and counselors to all Spanish-speaking inmates during orientation, the prison always had a Spanish-speaking employee on duty, and the medical department employed at least three nurses who were fluent in Spanish. The court held that the program did not violate procedural due process as the result of providing for fee deductions from an inmate's account even when the inmate did not sign an authorization form. The inmates had alleged that the program charged higher fees than the state Medicaid program, but the court found that the fees charged under Medicaid did not represent the maximum that could be constitutionally charged against a prisoner. According to the court, the failure of the prison to define the terms "chronic" and "emergency" which described in the inmate handbook conditions for which no fees would be assessed, did not make the program unconstitutionally vague. The court found no violation of the inmates' right of access to courts in response to the inmates' claim that the program reduced their funds available for legal mail and photocopying, where the inmates failed to establish actual or imminent interference with their access to court. (Berks County Prison, Pennsylvania)

U.S. District Court
DUE PROCESS
WITNESS
EVIDENCE

Terrell v. Godinez, 966 F.Supp. 679 (N.D.Ill. 1997). An inmate brought a § 1983 action against corrections officials claiming denial of due process in connection with his placement in segregation. The district court found that the inmate had not been deprived of a liberty interest for due process purposes when he was placed in segregation for 60 days. Although the inmate lost daily access to the prison yard, was unable to attend weekly religious services, and lost his daily job, these were not found by the court to be extreme variations in prison life. The court held that the prisoner failed to establish that the outcome of his disciplinary proceeding would have been different if he had been allowed to call witnesses and present documentary evidence, and that the disciplinary board's decision was supported by some evidence. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
CONDITIONS
PLACEMENT

Wagner v. Hanks, 128 F.3d 1173 (7th Cir. 1997). A state prison inmate sought federal habeas corpus relief alleging that his placement in disciplinary segregation violated due process. The district court dismissed the action but the appeals court vacated the district court decision and remanded the case with directions. The appeals court held that the inmate's claim was to be evaluated by comparing conditions of the inmate's confinement in segregation with conditions of segregation in the state's entire prison system, not just the inmate's individual prison. (Wabash Valley Correctional Institution, Indiana)

U.S. District Court
PLACEMENT
EQUAL PRO-
TECTION

Walling v Slusher, 976 F.Supp. 1402 (D.Kan. 1997). An inmate brought a civil rights action against a warden challenging his placement in administrative segregation pending a disciplinary hearing. The district court granted summary judgment for the warden, finding that the inmate's placement did not deprive him of a liberty interest in violation of due process. The court also held that failure to identify the offense with which the inmate was charged prior to transferring him to administrative segregation did not violate due process; the officials afforded the inmate ample notice of his disciplinary hearing and provided the basis for the charges against him. The inmate was eventually found not guilty of the charge by a disciplinary board and was transferred out of administrative segregation and back to the minimum security wing of the prison. (El Dorado Correctional Facility, Kansas)

U.S. District Court
DUE PROCESS
GOOD TIME
LIBERTY INTEREST
CONDITIONS

Warren v. Irvin, 985 F.Supp. 350 (W.D.N.Y. 1997). An inmate challenged his confinement in special housing that resulted from disciplinary determinations that were invalidated. The inmate had been found guilty of a disciplinary violation for attacking a corrections officer, but this determination was eventually reversed due to procedural errors. The district court held that the temporary loss of good-time credits and prison privileges, or confinement in a special housing unit for 161 days, did not implicate a liberty interest necessary to support a due process claim. The court also held that deprivations of food and water imposed on the inmate were not sufficiently serious to constitute cruel and unusual punishment under the Eighth Amendment. The inmate was deprived of one meal for violation of a requirement of returning trays and cups before receiving the next meal, and he was deprived of water because he was using it to flood the gallery. (Wende Correctional Facility, New York)

U.S. District Court
RETALIATION

West v. McCaughtry, 971 F.Supp. 1272 (E.D.Wis. 1997). An inmate filed a § 1983 action against prison officials and employees, alleging he had not been provided with medical assistance and that the employees had retaliated against him for his requests for medical attention and assistance in walking. The district court held that the inmate's claim for inadequate medical treatment was rendered moot by the inmate's receipt of the requested treatment. The court also denied the inmate's request for injunctive relief based on his claim that he was placed in segregation in retaliation for his repeated requests for medical attention and assistance. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
DUE PROCESS

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

1998

U.S. District Court
MEDICAL
TREATMENT

Africa v. Horn, 998 F.Supp. 557 (E.D.Pa. 1998). A prisoner challenged his confinement in administrative segregation which resulted from his refusal to submit to a skin test for tuberculosis. The district court entered judgment for the prison defendants, finding that the prison requirement that prisoners who refused to be tested be segregated in administrative custody for one year had a legitimate penological reason that overcame the prisoner's claim that his religion prohibited puncturing of the skin. The court also held that the prisoner did not allege sufficiently serious deprivations in administrative custody to support an Eighth Amendment claim. The inmate only claimed that he was deprived of television and telephone, but he was afforded telephone privileges during the latter part of his confinement. (Pennsylvania Department of Corrections)

U.S. Appeals Court
CONDITIONS

Arce v. Walker, 139 F.3d 329 (2nd Cir. 1998). An inmate who was placed in administrative segregation while temporarily housed at a prison to attend court alleged due process violations in a civil rights suit against prison officials. The district court granted summary judgment in favor of the officials. The appeals court affirmed in part, vacated in part, and remanded. The appeals court agreed with the district court that the inmate's 18-day confinement in administrative segregation was not unconstitutional. But the appeals court remanded the case for further proceedings with regard to the inmate's claim that his right of access to court had been violated. The inmate had alleged that his legal documents were destroyed and that officials engaged in abusive acts in retaliation for his pending civil rights lawsuit. (Attica Correctional Facility, New York)

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. Appeals Court
MEDICAL TREAT.

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
LENGTH
REVIEW
LIBERTY INTEREST

Edmonson v. Coughlin, 21 F.Supp.2d 242 (W.D.N.Y. 1998). An inmate brought a § 1983 against corrections officials alleging due process violations arising from his housing in administrative segregation. The district court granted summary judgment for the defendants, finding that the inmate's eight-month term in segregation did not implicate a liberty interest protected by due process. The court also found that evidence supported a hearing officer's finding that the inmate should remain in administrative segregation subject to periodic review, and that the inmate received meaningful periodic reviews of his status. (Attica Correctional Facility, New York)

U.S. District Court
LENGTH
CONDITIONS

Husbands v. McClellan, 990 F.Supp. 214 (W.D.N.Y. 1998). An inmate alleged that a false disciplinary ticket was issued against him and that there were due process violations in his prison disciplinary hearing. The district court dismissed the case, finding that the temporary loss of privileges during a six-month confinement in a segregated housing unit following a disciplinary hearing did not implicate a liberty interest. The court also found that the fact that the inmate's punishment initially included the loss of one year of good-time credit was not sufficient to establish a liberty interest. According to the court, conditions in the special housing unit, although they were more restrictive than conditions imposed on the general prison population, did not implicate a liberty interest. (Southport Correctional Facility, New York)

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

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 for legitimate purposes. 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. District Court
PLACEMENT

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
DUE PROCESS

McCarthy v. Armstrong, 2 F.Supp.2d 231 (D.Conn. 1998). An inmate in administrative segregation sued corrections officials alleging he was denied a classification hearing and that he received inadequate health care. The district court granted summary judgment for the officials, ruling that the inmate was not entitled to a classification hearing following his return from undergoing a competency examination at another correctional facility. The court noted that the inmate's classification did not change simply because he was temporarily transferred to another facility to undergo an evaluation. The inmate had been afforded a classification hearing before being initially confined to administrative segregation. (Northern Correctional Institution (Connecticut)

U.S. District Court
DUE PROCESS
LENGTH
CONDITIONS
LIBERTY INTEREST

McClary v. Kelly, 4 F.Supp.2d 195 (W.D.N.Y. 1998). A state prisoner brought a § 1983 action claiming that his placement in administrative segregation for a period in excess of four years violated his procedural due process rights. The district court held that the hardships suffered by the prisoner while in administrative segregation were atypical and significant, when compared to prisoners in the general population of a maximum security prison. The court found that the state had, by regulation, granted the prisoner a protected liberty interest in remaining free of administrative segregation, but that those regulations, if followed in a meaningful manner, satisfy the limited due process rights a prisoner has under the Due Process Clause of the Fourteenth Amendment. The case was ordered to proceed to trial. According to the court, there was agreement among medical experts that the total isolation aspect of administrative segregation confinement had a negative affect on the prisoner's mental health because the prisoner suffered from not having the social opportunities afforded to other prisoners through communal meals, work periods, educational, recreational and religious activities. The court noted that the inmate's period of confinement--four years, three months and 19 days--was far in excess of the normal period of segregation confinement. (Attica, Southport and Wende facilities, New York)

U.S. District Court
RELIGIOUS
SERVICES

Salahuddin v. Coughlin, 999 F.Supp. 526 (S.D.N.Y. 1998). A Muslim inmate alleged denial of access to congregate religious services in a civil rights action. The district court entered summary judgment for some defendants, but the case was reversed and remanded on appeal. On remand, the district court found that the right of prisoners in keeplock to attend congregate services was clearly established at the time the inmate was denied that right, and that evidence was sufficient to permit a jury to find that some prison officials were personally involved in the constitutional deprivation. The court noted that non-Muslim inmates were permitted to attend congregate religious services, and that the inmate had been permitted to attend services when he was confined in another facility even though he had the same disciplinary record that was cited as justification for denial in the current facility. (Sullivan Correctional Facility, New York)

U.S. District Court
LIBERTY INTEREST
DUE PROCESS

Sealey v. Coughlin, 997 F.Supp. 316 (N.D.N.Y. 1998). An inmate brought a civil rights against corrections officials based on alleged due process violations arising out of his administrative segregation. The district court entered judgment for the officials, finding that the inmate's placement in administrative segregation for 152 days was not an atypical and significant hardship and did not implicate a due process liberty interest. (Auburn Correctional Facility, New York)

U.S. Appeals Court
PLACEMENT
CONDITIONS

Simmons v. Cook, 154 F.3d 805 (8th Cir. 1998). Paraplegic inmates brought a § 1983 suit challenging their placement in solitary confinement. The district court ruled in favor of the inmates and the appeals court affirmed. The appeals court held that the inmates' Eighth Amendment rights were violated and that damage awards of $2,000 for each inmate for their 32-hour period of solitary confinement were not excessive . The court found that corrections officials violated the inmates' rights because the inmates did not receive adequate food or medical care while in solitary confinement. The inmates' wheelchairs did not fit through the solitary confinement cell doors, so they were lifted onto their beds and their wheelchairs were folded and then reopened inside their cells. Because their wheelchairs could not pass their cell bunks to reach the barred door where food trays were set, the inmates missed four consecutive meals. The inmates were unable to use a toilet during their 32-hours in solitary confinement because the facilities were not accessible and no assistance was provided. (Arkansas Department of Corrections, Diagnostic Unit)

U.S. Appeals Court
CONDITIONS
DIET

Talib v. Gilley, 138 F.3d 211 (5th Cir. 1998). A former state inmate brought a § 1983 action against prison officials alleging violation of his constitutional rights by withholding his meals on certain occasions. The district court dismissed the case as frivolous and the appeals court affirmed. The appeals court held that a prison regulation requiring prisoners being served meals in their cells while on lockdown status to face the wall on their knees with their hands behind their backs was reasonably related to legitimate penological interests in security and the safety of guards. The refusal of guards to serve meals to the inmate when he did not follow this procedure did not violate the Eighth Amendment. The court found that the inmate had also failed to show that his diet was nutritionally or calorically inadequate. (Texas Department of Criminal Justice)

1999

U.S. District Court
DUE PROCESS
LENGTH

Brown v. District of Columbia, 66 F.Supp.2d 41 (D.D.C. 1999). A former inmate brought a § 1983 action seeking damages for being placed in administrative segregation without due process. The district court granted partial summary judgment for the ex-inmate, finding that he did not receive the minimal due process required prior to his ten-month placement in administrative segregation. The inmate received no prior notice of a hearing, was not advised of the charge on which segregation partially rested, and was deprived of an opportunity to present his views. (District of Columbia, Lorton Facility, Virginia)

U.S. District Court
PLACEMENT
PRIVILEGES
REVIEW
EQUAL PROTECTION

Hameed v. Coughlin, 37 F.Supp.2d 133 (N.D.N.Y. 1999). A prisoner brought a § 1983 action against prison officials challenging his administrative segregation. The district court granted summary judgment in favor of the defendants, finding that they had a rational basis for placing restrictions on inmates who were placed in administrative segregation as the result of their behavior than the restrictions placed on inmates confined for nonpunitive reasons. The court found that periodic reviews of the inmate's confinement satisfied due process. The court also held that the determination to place the inmate in administrative segregation was supported by evidence, noting that when making prisoner classification decisions they need only demonstrate a rational basis for their distinctions to satisfy the equal protection clause. (Special Housing Unit, Shawagunk Facility, New York)

U.S. Appeals Court
DUE PROCESS
CONDITIONS

Kalwasinski v. Morse, 201 F.3d 103 (2nd Cir. 1999). A prison inmate brought a § 1983 action alleging various violations of his constitutional rights. The district court dismissed claims against some defendants and awarded summary judgment to the remaining defendants. The appeals court affirmed, finding that the inmate was not denied due process at his disciplinary hearing because the advance written notice provided to the inmate was sufficient to satisfy due process despite the discrepancy as to the precise nature of the charge. But the appeals court disagreed with the district court's conclusion that the inmate's 180 day disciplinary confinement in the prison's special housing unit was not an "atypical and significant hardship." (Southport Correctional Facility, New York)

U.S. Appeals Court
LENGTH
CONDITIONS
EXERCISE
PRIVILEGES

Sealey v. Giltner, 197 F.3d 578 (2nd Cir. 1999). An inmate brought a civil rights action alleging due process violations arising out of his administrative confinement in a segregated housing unit. Following a jury trial the inmate was awarded nominal damages and the court granted judgment as a matter of law for the defendants. The appeals court affirmed, finding that the conditions of administrative confinement, which lasted 101 days, did not violate the Eighth Amendment. According to the inmate, he was confined to his cell for 23 hours a day with one hour out for recreation, was limited to three showers per week, lost various privileges, was subjected to excessive noise, and had feces thrown on him by other inmates. (Special Housing Unit, Auburn Correctional Facility, New York)

U.S. District Court
RESTRICTIONS

Spellman v. Hopper, 95 F.Supp.2d 1267 (M.D.Ala. 1999). An inmate in administrative segregation in a state prison sued corrections officials challenging the corrections department's policy that prohibited prisoners from receiving subscription magazines and newspapers while in administrative segregation. The district court entered judgment for the inmate, finding that an absolute prohibition on subscription magazines and newspapers violated the First Amendment. The court noted that the policy was not rationally related to the goals of preventing fires, promoting health and sanitation through the control of pests and flooding, maintaining security by deterring concealment of contraband, fabrication of weapons, and altercations between inmates and guards over inmate property, or promoting "discipline." (William E. Donaldson Correctional Facility, Alabama)

U.S. Appeals Court
EQUAL PROTECTION
CONDITIONS

Welch v. Bartlett, 196 F.3d 389 (2nd Cir. 1999). An inmate sued prison officials under § 1983 alleging his confinement in a prison's special housing unit for 90 days deprived him of liberty without due process of law. The district court entered summary judgment for the defendants and the inmate appealed. The appeals court vacated and remanded, finding that fact issues as to whether the 90 days confinement constituted an atypical and significant deprivation precluded summary judgment. (Elmira Correctional Facility, New York)

2000

U.S. Appeals Court
PLACEMENT
ACCESS TO COURTS

Allah v. Seiverling, 229 F.3d 220 (3rd Cir. 2000). A prisoner filed a complaint alleging he was being kept in administrative segregation in retaliation for filing civil rights lawsuits against prison officials, and that he was denied meaningful access to the courts. The district court dismissed the complaint for failure to state a claim and the prisoner appealed. The appeals court vacated and remanded, finding that the prisoner stated a claim of retaliation and denial of access to the courts by alleging that his placement in administrative segregation resulted in reduced access to phone calls and inadequate access to legal research materials and assistance. (State Correctional Institution, Greene, Pennsylvania)

U.S. District Court
CONDITIONS
RESTRICTIONS
PROTECTIVE CUSTODY

Graham v. Perez, 121 F.Supp.2d 317 (S.D.N.Y. 2000). Protective custody inmates at a state prison brought a § 1983 action challenging their conditions of confinement. The district court dismissed the case, finding that the inmates failed to exhaust their administrative remedies prior to filing suit. The court also found that certain complained-of conditions of confinement were insufficiently serious to constitute Eighth Amendment violations as a matter of law. The complaints included: only two and one-half hours out of cell time daily, deprivation of job opportunities and prison wages, limited location and content of meals, inadequate lighting, lack of electrical outlets in cells, limited recreational opportunities, limited access to newspapers, limited personal telephone calls, and limited personal grooming opportunities. (Fishkill Correctional Facility, New York)

U.S. District Court
REVIEW
LENGTH

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

U.S. District Court
PROTECTIVE CUSTODY
EXERCISE

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

U.S. Appeals Court
PLACEMENT

Resnick v. Hayes, 213 F.3d 443 (9th Cir. 2000). A federal prisoner brought a § 1983 action claiming that a warden and correctional officers violated his constitutional rights when they confined him in the prison's special housing unit. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the prisoner who had been convicted but not yet sentenced had no liberty interest in not being confined in a special housing unit pending a disciplinary hearing. The court noted that the prisoner should be treated as a sentenced inmate rather than as a pretrial detainee. (Federal Detention Center, Dublin, California)

U.S. Appeals Court
LENGTH
REVIEW
DUE PROCESS

Shoats v. Horn, 213 F.3d 140 (3rd Cir. 2000). A state prisoner brought a § 1983 action against corrections officials alleging that his confinement for eight years in administrative segregation violated due process. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that although the long-term solitary confinement of the prisoner was significantly atypical and significant to create a protected liberty interest, the inmate had received due process through periodic reviews and the right to be heard. (State Correctional Institution, Greene, Pennsylvania)

U.S. District Court
REGULATIONS
FREE SPEECH

Spellman v. Hopper, 142 F.Supp.2d 1323 (M.D.Ala. 2000). A prison inmate brought a suit challenging a corrections department regulation which limited access to subscription publications for prisoners in administrative segregation, seeking declaratory and injunctive relief. The district court held that the subsequent amendment of the regulation, and the inmate's release from administrative segregation, did not render the case moot. The court entered declaratory judgment that the former absolute prohibition of receipt of subscription publications by inmates in segregation violated the First Amendment, and that the policy should not be implemented further. The court noted that the corrections department possessed the power to return the regulation to its original form. (Alabama Department of Corrections)

U.S. Appeals Court
LENGTH
DUE PROCESS

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

U.S. District Court
PLACEMENT
CONDITIONS
DUE PROCESS

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. District Court
CONDITIONS
EXERCISE
RETALIATION

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
LENGTH
TRANSFER
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, New York)

U.S. District Court
DUE PROCESS
PROTECTIVE CUSTODY

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
DUE PROCESS

Riggins v. Walter, 279 F.3d 422 (7th Cir. 2001). A prison inmate brought a § 1983 action against prison officials alleging that his constitutional rights had been violated in a prison disciplinary process. The district court dismissed the claims and the inmate appealed. The appeals court affirmed, finding that a postdeprivation hearing provided to the inmate after he was placed in segregation was sufficient to satisfy due process requirements, based on his alleged involvement with bringing drugs into the prison. The court also held that the inmate failed to show that officials acted with deliberate indifference to conditions in his segregation unit cell. The appeals court found that the claimed punishment of the inmate for refusing to participate in a polygraph examination, without more, did not result in a violation of the inmate's Fifth Amendment right against self-incrimination. (Menard Correctional Facility, Illinois)

U.S. Appeals Court
EXERCISE

Robinson v. Prunty, 249 F.3d 862 (9th Cir. 2001). A prisoner filed a civil rights action alleging that operation of integrated exercise yards in prison administrative segregation units constituted cruel and unusual punishment in violation of the Eighth Amendment. The district court denied summary judgment to the defendants and the appeals court affirmed. The appeals court found a genuine issue of material fact as to whether prison officials' and officers' alleged conduct evidenced deliberate indifference to the risk that violent outbursts would result from placing inmates of different racial backgrounds in integrated exercise yards. The court noted that the law regarding prison officials' duty to protect inmates from violence at the hands of other prisoners was clearly established in 1996 when the prisoner was attacked by another in a prison exercise yard. The prisoner was allegedly attacked by Mexican American inmates in exercise yard fights. (Calipatria State Prison, California)

U.S. District Court
EXERCISE
RESTRAINTS

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 Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
EXERCISE
RESTRICTIONS
TELEPHONE

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
DUE PROCESS
CONDITIONS
LIBERTY INTEREST

Austin v. Wilkinson, 189 F.Supp.2d 719 (N.D.Ohio 2002). A class of current and former prisoners at a high maximum security prison brought a § 1983 action seeking injunctive relief, alleging denial of due process in their placement and retention at the facility. The district court held that: (1) the inmates had a liberty interest in their conditions of confinement; (2) the inmates were entitled to due process protection in decisions to send them and retain them at the facility; (3) the inmates were denied due process in the decisions to send them to, and retain them at, the facility; and (4) new corrections policies failed to provide adequate due process safeguards. The court held that the combination of conditions faced by inmates at the high maximum security prison imposed an atypical and significant hardship, giving the inmates a liberty interested protected by due process. The court noted that inmates in the prison were subjected to lengthy stays of indefinite duration, had extremely limited contact with other individuals, were never allowed outdoor recreation, were subject to extremely intrusive restrictions when they were allowed out of their cells, and were denied parole eligibility. The court held that inmates sent to the prison were entitled to minimal due process consisting of: (1) twenty-four hour advance notice of all specific evidence relied upon to support reasons for reclassification; (2) a requirement that an inmate be allowed to appear at his reclassification hearing and present evidence, including witnesses and documents; and (3) a requirement that the reclassification committee issue a written statement specifically describing evidence relied on and reasons for its recommendation. "Having found that the defendants violated, and will continue to violate, the plaintiffs' constitutionally liberty interest," the court ordered the parties to file proposed injunctive orders to correct the violations. (Ohio State Penitentiary)

U.S. Appeals Court
DUE PROCESS

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. Appeals Court
RETALIATION

Gayle v. Gonyea, 313 F.3d 677 (2nd Cir. 2002). A prisoner sued prison officials under §1983 alleging that they filed a false misbehavior report and subjected him to solitary confinement for exercising his right to file grievances. The district court entered summary judgment in favor of the defendants. The prisoner appealed and the appeals court reversed and remanded. The appeals court held that the prisoner met his burden of showing that his conduct was constitutionally protected, and that summary judgment was precluded by fact issues as to whether retaliation was a substantial factor in the officials' decision to charge and punish the prisoner. The prisoner had filed a formal complaint complaining of an alleged incident in which a prison vehicle ran over another prisoner. (Bare Hill Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS

Higgs v. Carver, 286 F.3d 437 (7th Cir. 2002). A pretrial detainee brought a civil right action alleging due process violations and retaliation. The district court dismissed the complaint and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded. The district court held that issues of fact existed as to the reason for the detainee's segregation, and that the detainee's retaliation allegations sufficiently stated a claim. The appeals court was unable to determine from the record whether the detainee was placed in lockdown segregation for preventive purposes or for punishment. (Indiana)

U.S. District Court
PROGRAMS
EQUAL PROTECTION

Little v. Terhune, 200 F.Supp.2d 445 (D.N.J. 2002). A prisoner housed in a maximum security prison brought a civil rights suit against state prison officials for allegedly violating his equal protection rights by failing to provide him with educational programming while he was confined in an administrative segregation unit. The district court held that the denial of educational programming to prisoners in administrative segregation did not violate equal protection on the basis that the programs were available to the general prison population, to younger inmates in administrative segregation, or to all inmates in segregation units at other institutions. The court noted that although inmates do not have a constitutional right to educational and work programs, once the state grants such rights to prisoners it may not invidiously discriminate against a class of inmates in connection with those programs unless the difference in treatment is rationally related to the legitimate governmental interest to justify the disparate treatment. The court found a legitimate connection, where prison officials' allocation priorities for the scarce resource of educational services responded to security concerns and budget restraints. The court also found that there was a legitimate government interest in promoting innovative prison programs that might be stymied by a requirement that there be system-wide uniformity. (N.J. State Prison)

U.S. District Court
SEARCHES

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
PLACEMENT
CONDITIONS

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 held that fact questions as to whether the inmate feared further sexual assault by the corrections officer, whether the inmate made a cottage manager aware of her fear of assault, whether the cottage manager was deliberately indifferent to the inmate's notification regarding a threatened sexual assault, and whether the proffered reasons for placing the inmate in segregation was a pretext. The inmate alleged that a corrections officer went into her room and fondled her breasts and made lewd comments, and then threatened to "get her tomorrow." The inmate said she notified corrections officials of the assault and threat and that the following day the officer sexually assaulted her after she went to sleep. She alleged that she was placed in solitary confinement instead of protective custody after she reported the assault. 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. Appeals Court
PLACEMENT
EQUAL PROTECTION
PRIVILEGES

Rahman X v. Morgan, 300 F.3d 970 (8th Cir. 2002). A state prisoner sued prison officials, alleging constitutional violations resulting from his placement in segregation rather than death row. The district court dismissed the claim following a bench trial. The appeals court affirmed, finding that the prisoner was given process sufficient to comply with the due process clause. The appeals court held that there was a rational basis for treating the prisoner differently from other inmates who had been sentenced to death, due to his prior violent assaults and attempts to break out of his cell, which justified housing him in a cell with more secure doors. The prisoner had been sentenced to death for killing a correctional officer and had spent 26 months in segregation, where he was unable to watch television, unlike prisoners housed on death row. The court noted that while in segregation the prisoner was not subjected to the same hardships imposed on prisoners who were placed in segregation for punitive reasons. (Arkansas Dept. of Correction)

U.S. District Court
TELEPHONE
MAIL

Simpson v. Gallant, 223 F.Supp.2d 286 (D.Me. 2002). A pretrial detainee filed a §1983 action alleging his constitutional rights were violated when county jail officials denied him access to telephone and mail services. The district court granted summary judgment in favor of the defendants. The court held that the refusal to permit the pretrial detainee access to a telephone to arrange bail, after he was placed in disciplinary segregation for violations of jail rules, did not violate the detainee's Fourteenth Amendment rights, where the detainee retained the ability to use the mail and to meet with his attorney. (Penobscot County Jail, Maine)

U.S. District Court
ACCESS TO COURTS
TELEPHONE
MAIL

Simpson v. Gallant, 231 F.Supp.2d 341 (D.Me. 2002). A pretrial detainee brought an action against county officials, alleging violations of his right of access to telephone and mail services as the result of disciplinary actions taken against him. The district court held that the detainee's claim was properly characterized as a claim that jail disciplinary sanctions violated his constitutional right to make bail and to prepare his defense while he was a pretrial detainee. The court declined to determine, at the motion to dismiss phase of the case, if sanctions restricting access to mail and telephone were imposed to enforce reasonable disciplinary requirements. The court held that the detainee's allegations supported a claim that the officials interfered with his right to counsel, bail, and access to courts. The detainee alleged that the officials' restrictions forced his trial to be postponed, and that soon after his release from detention he was cleared of the charges. The detainee also alleged that he was able to make bail soon after he was able to contact his associate. (Penobscot County Jail, Maine)

U.S. District Court
CONDITIONS

Smith v. U.S., 207 F.Supp.2d 209 (S.D.N.Y. 2002). A federal prisoner filed an action under the Federal Tort Claims Act (FTCA) alleging that the Bureau of Prisons breached its duty to provide him with suitable quarters. The district court entered judgment for the government, finding no violation. The inmate alleged that the Bureau failed to adequately heat his cell and that it was so cold that he could see his breath, that his knees swelled and his arthritis worsened, and that he suffered severe stress, anxiety and panic attacks. The court found credible evidence that the cell temperature was within the normal range, and that prison officials immediately responded to the prisoner's complaints by raising the thermostat, checking the heating system, insulating the window, providing extra blankets and a portable heater, and transferring the prisoner to another cell. (Witness Security Unit, Federal Correctional Institution, Otisville, New York)

U.S. Appeals Court
DUE PROCESS

Torres v. Fauver, 292 F.3d 141 (3rd Cir. 2002). A prisoner brought a § 1983 action against prison officials, alleging that his due process rights were violated when he was sanctioned for violating prison rules. The district court granted summary judgment for the officials and the appeals court affirmed. The prisoner had been transferred to "less amenable and more restrictive quarters" and placed in disciplinary detention for 15 days and administrative segregation for 120 days, after he was found to have attempted to plan an escape. (Bayside State Prison, New Jersey)

U.S. District Court
PLACEMENT
RESTRICTIONS
TELEPHONE
MAIL
FREE SPEECH

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. (Utah State Prison)

U.S. Appeals Court
HOMOSEXUALS

Veney v. Wyche, 293 F.3d 726 (4th Cir. 2002). An inmate brought a § 1983 action against prison officials, alleging they treated him differently from other inmates because of his gender and sexual preference, in violation of his right to equal protection. The district court dismissed the claim and the appeals court affirmed. The appeals court held that the prison practice of segregating homosexual male inmates was based on legitimate penological interests, and that the gender-related disparate treatment in the housing of homosexuals was rationally calibrated to address legitimate concerns. According to the court, institutions for females are much less violent than those for males, and male inmates were more likely than females to have homophobic attitudes. The court noted that prison officials had an absence of ready alternatives available. (Riverside Regional Jail, Virginia)

U.S. District Court
CONTAGIOUS
DISEASES

Word v. Croce, 230 F.Supp.2d 504 (S.D.N.Y. 2002). An inmate sued state corrections officials alleging violation of her constitutional rights when she was left in segregated housing after she refused to submit to a tuberculosis test for religious reasons. The district court granted summary judgment to the officials. The court held that the prison regulation that requires segregated housing of inmates who refuse to submit to a test for latent tuberculosis did not violate the First Amendment rights of the inmate, because the regulation was rationally related to a legitimate penological interest in retarding the spread of a deadly disease. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
CONDITIONS

Alexander v. Tippah County, Miss., 351 F.3d 626 (5th Cir. 2003). Two state prisoners brought a § 1983 action alleging unconstitutional conditions of confinement. The district court dismissed the case and the appeals court affirmed. The appeals court held that the prisoners could not recover for mental or emotional damages as a result of their twenty-four hour placement in an unsanitary isolation cell, where the only claimed injury was nausea suffered by one prisoner that was not severe enough to warrant medical attention. The isolation cell, referred to as "the hole," was a sparse eight-by-eight concrete room without running water or a toilet. The only sanitary was facility was a grate-covered hole in the floor that could be flushed from the outside, and the only bed was a concrete protrusion in the wall wide enough for one person. The prisoners were not provided with a mattress, sheets, or blankets, but they conceded that the cell was clean and dry when they were placed in it. They were initially stripped of their clothes but were eventually given boxer shorts to wear. (Tippah County Detention Facility, Mississippi)

U.S. Appeals Court
PREVAILING PARTY

Bowman v. Corrections Corp. of America, 350 F.3d 537 (6th Cir. 2003). The mother of a deceased prisoner sued a private company that managed a prison, a warden and a physician, under § 1983 alleging failure to provide adequate medical care to the prisoner. The district court entered judgment on a jury verdict finding that the defendants were not indifferent to the prisoner's serious medical condition. The district court granted judgment as a matter of law that the company's medical policy, as reflected in its contract with the physician, was unconstitutional. The parties appealed. The appeals court affirmed in part and reversed in part. The appeals court reversed the district court's holding with respect to the constitutionality of the medical policy, along with the injunction awarded on that basis, finding that the issue is moot for the plaintiff and she had no standing to bring such a claim for prospective relief.(South Central Correctional Center, Tennessee)

U.S. District Court
CONDITIONS

Freeman v. Berge, 283 F.Supp.2d 1009 (W.D.Wis. 2003). An inmate challenged the conditions of his confinement. The district court granted qualified immunity to the defendants, finding that depriving an inmate of sensory stimulation or social interaction did not violate the inmate's clearly established rights. The inmate alleged he was denied access to the outdoors, was subject to 24-hour lighting and audio and video-monitoring. The court noted that agreement among mental health professionals regarding the deleterious effects of solitary confinement did not translate into legal notice that the defendants may have been violating the Eighth Amendment. (Supermax Correctional Facility, Boscobel, Wisconsin)

U.S. Appeals Court
DUE PROCESS
ASSIGNMENT

Jackson v. Carey, 353 F.3d 750 (9th Cir. 2003). A state prison inmate brought a pro se § 1983 action against prison officials, alleging that his transfer to a security housing unit violated his due process rights. The district court dismissed the complaint for failure to state a claim and the inmate appealed. The appeals court reversed in part, affirmed in part, and remanded. The appeals court held that the inmate sufficiently stated a claim for violation of a protected liberty interest under the due process clause, with his allegations that he was sentenced to a security housing unit after a disciplinary hearing, where he had been placed pending the disciplinary hearing, and remained there even after he successfully appealed the disciplinary hearing. (California Correctional Institution at Tehachapi)

U.S. Appeals Court
VISITS
RELIGIOUS SERVICES
EXERCISE

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. District Court
CONDITIONS
HYGIENE

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)

U.S. Appeals Court
HANDICAP
CONDITIONS
DUE PROCESS

Serrano v. Francis, 345 F.3d 1071 (9th Cir. 2003). A physically disabled black prison inmate appealed an order that granted summary judgment in favor of a correctional officer on claims that officials denied the inmate due process and equal protection by refusing to allow him to present live witness testimony during a prison disciplinary hearing. The appeals court affirmed in part and reversed in part. The appeals court held that the inmate's physical disability, coupled

with his confinement in administrative segregation for nearly two months in a unit that was not designed for disabled persons, gave rise to a protected liberty interest under the Due Process Clause. The court noted that the inmate was denied use of a wheelchair which he had been allowed to use in the general population, allegedly could not take a proper shower, could not use the toilet without hoisting himself up by the seat, had to crawl into bed by his arms, could not participate in outdoor exercise in the yard, and was forced to drag himself around a vermin and cockroach-infested floor. (California Institute for Men, Chino, California)

U.S. District Court
RECREATION
SEARCHES

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
RELIGION
RESTRICTIONS

Sutton v. Rasheed, 323 F.3d 236 (3rd Cir. 2003). State prisoners brought a § 1983 action alleging infringement upon their rights under the free exercise clause of the First Amendment. The district court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed, finding that although the prisoners' rights had been violated, corrections officials were entitled to qualified immunity because the law was not clearly established at the time. The court held that a state prison regulation that prohibited "books other than legal materials and a personal Bible, Holy Koran or other religious equivalent" was invalid as applied to restrictive status prisoners, who were precluded from possessing Nation of Islam texts on the basis that those documents were not religious. The court found that there was no legitimate penological interest in prison administrators' denial of those texts. (Special Management Unit, State Correctional Institution-Camp Hill, Pennsylvania)

U.S. District Court
CONDITIONS
DIET
EXERCISE

Wilson v. Vannatta, 291 F.Supp.2d 811 (N.D.Ind. 2003). A state prison inmate brought a § 1983 action against corrections officials, seeking damages and injunctive relief. The district court held that the inmate stated claims for excessive use of force, deliberate indifference to his serious medical needs, and Eighth Amendment violations resulting from deprivation of food and exercise. The inmate alleged that a doctor had prescribed a pain reliever, muscle relaxer, and physical therapy for his medial problems, but that a prison official canceled his treatment because the prison could not afford the cost. The inmate alleged that prison lockup unit staff deprived him of food and recreation, gave him rotten food, reduced his ration every day, and gave him trays with food missing. The inmate allegedly lost twenty-five pounds and suffered from stomach pain and headaches. (Miami Correctional Facility, Indiana)

2004

U.S. Appeals Court
PLACEMENT
DUE PROCESS
CONDITIONS

Austin v. Wilkinson, 372 F.3d 346 (6th Cir. 2004). State inmates housed at a supermaximum security prison facility brought a class action against corrections officials under § 1983, alleging violations of their procedural due process rights. The district court ruled that officials had violated the inmates' due process right and granted injunctive relief. The court ordered the adoption of a revised version of placement regulations and the officials appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that state inmates enjoyed a due process protected liberty interest in not being placed at a supermaximum facility, but that the district court did not have the power to order state officials to modify their predicates. The appeals court upheld the procedural modifications made by the district court to the state's placement and retention policies, which included increased notice requirements and changes to the administrative appellate procedure. The court noted past erroneous and haphazard placements at the facility, and the availability of administrative segregation to ensure the state's interest in safety. The appeals court found that the proper comparison was within the state's prison system, not between other supermaximum facilities in other states. The court held that confinement at the supermaximum facility imposed an atypical and significant hardship, given the extreme isolation visited upon inmates, lack of outdoor recreation, limitations on personal property rights and access to telephone and counsel, and ineligibility for parole. (Ohio State Penitentiary. Youngstown)

U.S. District Court
PLACEMENT

Hewes v. Magnusson, 350 F.Supp.2d 222 (D.Me. 2004). A state inmate brought an action asserting that prison officials violated his rights. The district court granted summary judgment in favor of the officials. The court found that the officials' failure to protect the inmate from an assault by another prisoner did not demonstrate deliberate indifference to the inmate's safety, even though the officials were aware of the inmate's past confrontations with the other prisoner

and that they were currently housed in the same unit. The court noted that the inmate did not tell the officials that other inmates had told him that the prisoner was making statements about him. The court held that the inmate's placement in administrative segregation after he allegedly took part in a demonstration challenging a prison policy did not impose an atypical and significant hardship, even though the inmate did lose the possibility of earning good time credits. The court noted that no credits were taken away and he continued to receive legal materials during segregation. The court found that the officials had a legitimate safety reason for placing the inmate in administrative segregation, where the inmate refused to tell officials the identity of the person who had attacked him. The court held that the prison's library schedule did not deprive the inmate of his right of access to courts, even if the inmate's laundry duties and hygiene needs limited his access to four and one-half hours per week, and the inmate had once been denied additional library time. Inmates were allowed to use the law library five days per week during their three-hour recreation period, the inmate was permitted to take books back to his cell, and the single denial of additional time had no material impact on the disposition of the inmate's case, according to the court. (Maine State Prison)

U.S. Appeals Court
DUE PROCESS
CONDITIONS
LENGTH

Palmer v. Richards, 364 F.3d 60 (2nd Cir. 2004). A state prisoner brought a pro se civil rights action under § 1983, alleging that an officer used excessive force to subdue him in an altercation that followed a pat frisk search. The prisoner also alleged that a superintendent violated his right to due process in the course of the resulting disciplinary hearing and grievance. The district court granted summary judgment, in part, for the defendants, and the superintendent appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner had a liberty interest not to be placed in administrative segregation. The appeals court held that the district court must develop a detailed record of the conditions of confinement in segregation compared to ordinary prison conditions to determine whether an atypical and significant hardship existed, when a prisoner is confined for an intermediate duration (between 101 and 305 days). The court noted that confinement longer than an intermediate duration, and under normal segregation conditions, is a sufficient departure from the ordinary incidents of prison life to require procedural due process protections. (Sing Sing Correctional Facility, New York)

U.S. District Court
SEARCHES

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
DUE PROCESS

Sira v. Morton, 380 F.3d 57 (2nd Cir. 2004). A state prisoner brought an action against various correctional officials, alleging that his due process rights were violated by his placement in a special housing unit for six months following a prison disciplinary hearing determination that the prisoner had organized a prisoner strike. The district court denied summary judgment and the officials appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the officials were not entitled qualified immunity on the prisoner's due process claim of inadequate notice of the charges that constituted the basis of a prison disciplinary hearing. (Green Haven Correctional Facility, New York)

U.S. District Court
PLACEMENT IN
SEGREGATION

U.S. v. Catalan-Roman, 329 F.Supp.2d 240 (D.Puerto Rico 2004). Two pretrial detainees filed a motion contesting their placement in administrative segregation after they were certified as being death-penalty eligible. The district court granted their motion, finding that death certification did not justify their automatic placement in administrative detention. The court noted that the detainees had resided in the general prison population without incident for over one year before being death-certified, there was no evidence that death-certified detainees were more likely to be disruptive or to take hostages, and their placement in administrative segregation eliminated their ability to establish mitigating evidence relative to their character and adjustment to life in prison. (Metropolitan Detention Center-Guaynabo, Puerto Rico)

U.S. District Court
DIET
EXERCISE
PRIVILEGES
RELIGIOUS SERVICES
VISITS

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
FREE SPEECH
PRIVILEGES
REGULATIONS

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. District Court
TELEPHONE

Davidson v. Murray, 371 F.Supp.2d 361 (W.D.N.Y. 2005). A state prisoner brought a § 1983 action against a state corrections department, officers and prison officials, alleging unconstitutional conditions of confinement during his incarceration. The district court granted summary judgment in favor of the defendants. The court found that thirty-day keeplock confinement and loss of telephone privileges imposed on the prisoner as a disciplinary sanction did not deprive the prisoner of his procedural due process rights. According to the court, denial of basic hygiene items and cleaning supplies, such as toothpaste, soap, toilet tissue and cell cleaning items, did not violate the prisoner's Eighth Amendment rights. (Attica Correctional Facility, New York)

U.S. District Court
PLACEMENT IN SEGREGATION
SEARCHES

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 noted that the inmate had made hostile requests that the prison chaplain contact the cardinal to request his support in challenging his conviction, that the inmate told the chaplain he intended to attend the ceremony despite a prohibition and to confront the cardinal there, and a Catholic church official reported that the inmate had written belligerent letters to the cardinal. The court held that the officials' decision to place the inmate in a solitary housing unit for seven hours during the ceremony due to the security risk the inmate posed to the cardinal was reasonable and did not violate the inmate's due process rights. 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. Appeals Court
DUE PROCESS

Holly v. Woolfolk, 415 F.3d 678 (7th Cir. 2005). A pretrial detainee placed in segregation for two days without a prior hearing brought a § 1983 action for damages against correctional officers. The district court dismissed the case and the detainee appealed. The appeals court affirmed. The appeals court held that the placement of the detainee did not violate his due process rights, where the officers had reason to believe that the detainee was disrupting a jail headcount, which would interfere with jail security and discipline. The court noted that the detainee was given a hearing upon his release from segregation and that he was returned to the general population. The court expressed confusion about "what damages he could prove for being confined to a cell for two days rather than being free to roam the dangerous general-population area of the jail--and dangerous it is." (Cook County Jail, Illinois)

U.S. Appeals Court
CONDITIONS
MEDICAL TREATMENT

Jarriett v. Wilson, 414 F.3d 634 (6th Cir. 2005). A prisoner brought a civil rights action against prison officials under the Eighth Amendment, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the prisoner only had an unrecoverable "de minimis injury" for the purposes of his civil rights claim, which was subject to the provisions of the Prison Litigation Reform Act (PLRA). The court found that the officials' refusal to give the prisoner medical treatment was not objectively unreasonable. The prisoner had been put in a small strip cage and held there for 12 hours. He experienced swelling, pain and cramps in his legs as a result, but these injuries were not serious enough to mention to medical staff on the day of his release from the strip cage, or two days later. When he mentioned them two weeks later there were no medical findings. Prison staff had checked on the prisoner's assertions when he told them that he had a leg injury, before they placed him in the strip cage. The prisoner had been placed in the prison's segregation unit for fighting with another inmate. While in segregation, he went on a hunger strike to protest various prison conditions. His cellmate was required to eat his meal in a strip cage in the segregation unit so he would not pass any food to the prisoner during the hunger strike. The strip cage is a mesh steel cage with a small hole through which clothes or other items can be passed. When they later suspected that the prisoner was hiding food in his cell, they placed him in another strip cage next to his cellmate and ordered him to strip. (Trumbull Correctional Institution, Ohio)

U.S. District Court
PRIVILEGES

King v. Frank, 371 F.Supp.2d 977 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging undue restrictions on telephone usage and access to written publications, improper cell illumination, and failure to provide adequate mental health care. The district court granted summary judgment in favor of the officials. The court held that the inmate was not deprived of a basic human need by the presence of a constantly illuminated nine-watt fluorescent light in his cell, even though he alleged that the light caused him sleeplessness and other problems. The court noted that a registered nurse and a psychologist both examined the inmate and concluded that he suffered no ill effects. The court found that policies that placed extra restrictions on telephone use and the number of visitations for inmates in segregation status, and prohibited those inmates from possessing publications other than books, were reasonably related to legitimate penological interests. According to the court, the policies were designed to promote security and rehabilitation by allowing for the award of increased privileges for segregated inmates who demonstrated good behavior. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
CONDITIONS

Lekas v. Briley, 405 F.3d 602 (7th Cir. 2005). A state inmate sued several prison officials under § 1983, alleging constitutional violations stemming from his placement and confinement in disciplinary segregation. The district court dismissed the case and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate's alleged conditions of disciplinary segregation at the prison were not so atypical and significant as to constitute a deprivation of a liberty interest. The inmate alleged that while in segregation he was unable to participate in prison programs, educational programs, work programs, and contact visits. (Pinckneyville Correction Center, Illinois)

U.S. Appeals Court
DUE PROCESS

Lira v. Herrera, 427 F.3d 1164 (9th Cir. 2005). A state prison inmate brought § 1983 action alleging that his administrative segregation and placement in a special housing unit violated his due process rights. The district court granted summary judgment for the defendants based on the inmate's failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The inmate appealed. The appeals court reversed and remanded. The court held that PLRA does not require dismissal of an entire action when a prisoner brings a § 1983 mixed action (one containing both exhausted and unexhausted claims.) (Deuel Vocational Institute and Pelican Bay Prison, California)

U.S. Appeals Court
PLACEMENT IN SEGREGATION
LENGTH
DUE PROCESS

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
CONDITIONS
SURVEILLANCE
SEARCHES

Rose v. Saginaw County, 353 F.Supp.2d 900 (E.D.Mich. 2005). Twenty-two pretrial detainees sued a county, sheriff's department, sheriff and individual police officers, challenging the county's policy of housing uncooperative and disruptive detainees naked in administrative segregation. The district court held that the policy violated the detainees' due process rights and their rights to be free of unreasonable seizure. According to the court, the policy was an exaggerated response to the county's concerns about suicide, officer safety, and administrative costs. The court declined to issue a preliminary injunction, and granted qualified immunity to several of the defendants because the detainees' right not to have their clothes removed was not clearly established at the time of the incidents. The court held that the forced removal of clothing by an officer of the opposite sex was not justified by safety and security concerns. (Saginaw County Jail, Michigan)

U.S. District Court
RELIGIOUS SERVICES

Rowe v. Davis, 373 F.Supp.2d 822 (N.D.Ind. 2005). A state inmate brought a pro se § 1983 action alleging that his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) had been violated. The district court held that the inmate could proceed on his claim for injunctive relief challenging the denial of his right to receive visits from a religious leader, on his claim for injunctive relief challenging the refusal to allow him to have a Celtic Cross necklace, and on his claim seeking individual review of his case to determine his eligibility to participate in communal worship while in segregation. The court found that the alleged confiscation of the inmate's religious literature, even though it did not fall within the prohibition against gang-related literature or literature supporting or encouraging prison disturbances, substantially burdened the inmate's exercise of his religion and stated a claim under RLUIPA. The court also found a potential RLUIPA violation in the inmate's allegation that denial of his right to receive visits from a religious leader of his own faith. The court ruled that denial of the Celtic Cross necklace might place a substantial and unnecessary burden on the practice of his religion, where the inmate alleged that wearing such a necklace was part of the way in which he practiced and expressed his religious beliefs. The court found a potential RLUIPA violation in the enforcement of a prison policy that prohibited all religious services for prisoners in administrative segregation. (Michigan Department of Corrections)

U.S. Appeals Court
DUE PROCESS
HEARING

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 appeals court held that the immediate transfer of the prisoner to a restricted area within the prison after the prisoner killed another inmate did not violate his due process rights, given the exigent circumstances posed by the need to isolate him for his own sake and for the protection of other inmates. The court found that the prisoner was not deprived of liberty without due process when he was detained in a restricted area for 40 days without a hearing. The court noted that the prisoner's disciplinary hearing had been indefinitely deferred and there was a need to isolate the prisoner from the general population pending a criminal investigation. (New Hampshire State Prison)

U.S. Appeals Court
CONDITIONS
HYGIENE
SEARCHES

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
LENGTH
DUE PROCESS
ACCESS TO COURTS

U.S. v. Basciano, 369 F.Supp.2d 344 (E.D.N.Y. 2005). A purported crime boss who was being held as a pretrial detainee petitioned for a writ of habeas corpus, challenging his detention in a restrictive special housing unit. The district court granted the petition, finding that indefinite solitary confinement of the detainee was not reasonably related to the government's legitimate objective of preventing the detainee from allegedly planning or approving violent criminal conduct while behind bars. The court held that to justify such "harsh" detention, more substantial proof was required that the detainee committed or directed the crime of murder in aid of racketeering while in detention, or had conspired with another inmate to murder a federal prosecutor. According to the court, the security restrictions placed obstacles on the detainee's communications with his attorneys, which was especially important because the detainee was charged with a crime for which he could receive the death penalty. (Federal Bureau of Prisons, Metropolitan Correctional Center, Manhattan, New York)

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U.S. District Court
LIBERTY INTEREST

Davies v. Valdes, 462 F.Supp.2d 1084 (C.D.Cal. 2006). A state prisoner brought a pro se action against various corrections officials, alleging that they violated his due process rights in connection with disciplinary proceedings. The district court granted summary judgment in favor of the defendants. The court held that the issuance of a report that the prisoner possessed a weapon, and approval of the report during the administrative review, did not violate the prisoner's due process rights because they were supported by some evidence. The reporting prison official stated that he found a nail with black electrical tape wrapped around its handle end under the prisoner's locker, and that he found a pencil wrapped in electrical tape in the same manner. According to the court, the refusal to allow testimony at the disciplinary proceedings did not violate the prisoner's due process rights. Under the Due Process Clause, prison officials have the discretion, within reasonable limits, to refuse to call witnesses in a prison disciplinary hearing if their testimony would be unnecessary or irrelevant, or would impose hazards in the prison. The court found that the prisoner did not have a liberty interest in avoiding confinement in an administrative segregation unit (ASU) or special housing unit (SHU). The court concluded that the disciplinary proceedings against the prisoner were not in retaliation for his filing of a grievance, or for a grievance filed on behalf of other inmates in his role as an advisory committee representative, so as to violate his free speech rights. The prisoner asserted that officials planted a weapon on him. The prison officials were unaware of the prisoner's prior complaints until the prisoner filed suit. The court also held that requiring the prisoner to submit to a drug/urine test did not violate his right to privacy, where he was found in possession of a weapon, his bed was next to the bed of an inmate found with marijuana, and the prison had a legitimate interest in attempting to curb drug use. (California Rehabilitation Center)

U.S. District Court
PLACEMENT
LENGTH
EQUAL PROTECTION

Dickens v. Taylor, 464 F.Supp.2d 341 (D.Del. 2006). A prisoner filed a civil rights action against various corrections defendants, alleging unlawful conditions of confinement and excessive force. The district court dismissed the claims. The court held that: (1) placement of the prisoner in isolation for not more than two months at a time did not implicate a liberty interest; (2) neither Delaware law nor Department of Corrections regulations created a due process liberty interest in a prisoner's classification within an institution, and the prisoner had no property or liberty interest in the prison classification program or his housing assignment; (3) the prisoner failed to state an equal protection claim based on the allegation that a majority of the inmates in the special housing unit were black; (4) the denial of the disciplined prisoner's television privilege did not give rise to an Eighth Amendment claim since television privileges did not constitute necessities; and (5) the failure to serve brand name cereals and cold fresh water during meal time were not an Eighth Amendment violation. (Delaware Correctional Center)

U.S. Appeals Court
CONDITIONS
EXERCISE

Fogle v. Pierson, 435 F.3d 1252 (10th Cir. 2006). A state prisoner brought a civil rights action against state prison officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the district court abused its discretion when it found that the inmate's three-year period of administrative segregation, during which time the prisoner was confined to his cell for all but five hours each week and denied access to any outdoor exercise, was not "atypical" in violation of the prisoner's due process rights. The inmate had escaped from a county jail when he was a pretrial detainee by posing as a visitor and simply walking out of the facility. Although he was quickly apprehended, the incident caused embarrassing media coverage for state prison officials. (Limon Correctional Facility, Colorado)

U.S. Appeals Court
REGULATIONS

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, and 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. 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 Correctional Facility, New York)

U.S. District Court
MEDICAL TREATMENT

Hadix v. Caruso, 461 F.Supp.2d 574 (W.D.Mich. 2006). State prisoners filed a class action under § 1983 in 1980, alleging that conditions of their confinement violated their constitutional rights. Following settlement of claims by consent decree, and termination of the enforcement of mental health provisions of the consent decree, a prisoner moved to reopen the judgment regarding mental health care and for the issuance of preliminary injunction. The district court granted the motion. The court held that reopening the mental health provisions of the consent decree was warranted where many recurrent problems noted by physicians concerned "cracks" between medical and mental health care. The court noted that forcing separate enforcement actions on related topics would do a disservice to prisoners and administrators by forcing them to function under multiple enforcement regimes. According to the court, the prison's failure to provide daily psychologist rounds to mentally ill prisoners in a segregation unit violated their Eighth Amendment rights, inasmuch as such prisoners often had psychiatric needs which could not be accommodated without rounds due to their lack of movement and the prisoners' inability to request care, and that segregation often placed prisoners with mental illness at a heightened risk of mental decompensation and in conflict with correctional officers. The court held that the pattern and practice of non-treatment of prisoners with mental illness, and the uncoordinated treatment of prisoners presenting complicated cases with interdisciplinary problems, violated the Eighth Amendment, in that it deprived prisoners of necessary services for serious medical and mental health needs. The court found that the prison's use of mechanical in-cell restraints, including "top of the bed" restraints consisting of chaining a prisoner's hands and feet to a concrete slab, as disciplinary method and/or control mechanism constituted torture and violated the Eighth Amendment, notwithstanding a six-hour limit on bed restraints but which did not prohibit the use of other dangerous restraint devices at end of the six-hour period. (Southern Michigan State Prison, Jackson)

U.S. District Court
PLACEMENT

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
MAIL

Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). An inmate brought a civil rights action against prison officials, challenging a regulation governing possession of stamps. The district court entered judgment in favor of the officials and inmate appealed. The appeals court held that the inmate did not have a constitutional right to unlimited free postage for non-legal mail, and the regulation was reasonably related to legitimate penological interests, and thus did not violate the inmate's First Amendment right to send outgoing non-legal mail. The prison regulation prevented certain inmates in keeplock from receiving stamps through the mail and permitted them to receive only one free stamp per month for personal use. The court noted that stamps could be used by inmates as a form of currency, and the regulation furthered the legitimate goals of reducing thefts, disputes, and unregulated prisoner transactions. (New York State Department of Correctional Services)

U.S. District Court
CONDITIONS

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: (1) the inmate did not have a due process liberty interest in remaining free from administrative segregation prior to a disciplinary hearing; (2) the use of confidential information in a disciplinary hearing did not violate the inmate's right to procedural due process; and (3) the inmate was not denied due process as the result of the officials' refusal to permit her to listen to and read intercepted inmate phone calls. The court noted 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
CONDITIONS
DUE PROCESS

McGoldrick V. Farrington, 462 F.Supp.2d 112 (D.Me. 2006). An inmate brought a civil rights action against state prison officials alleging cruel and unusual punishment and violation of due process. The defendants filed a motion to dismiss. The court held that the prisoner failed to allege any physical injury, and was not deprived of due process. According to the court, the inmate's loss of mattress privileges while housed in the Special Management Unit failed to allege any physical injury that resulted from the removal of his mattress, as required to bring a civil rights action for mental or emotional injury suffered while in custody. (Maine State Prison)

U.S. District Court
EXECUTION

Morales v. Tilton, 465 F.Supp.2d 972 (N.D.Cal. 2006). A death row inmate filed a § 1983 action alleging that California's protocol governing executions by lethal injection violated the Eighth Amendment prohibition against cruel and unusual punishment. The court held that the protocol, as implemented, violated the Eighth Amendment, even though the sequence of three drugs described in the protocol, when properly administered, would provide for a constitutionally adequate level of anesthesia. The court found that there were systemic flaws in the implementation of the protocol that made it impossible to determine with any degree of certainty whether inmates may have been conscious during previous executions or whether there was any reasonable assurance going forward that an inmate would be adequately anesthetized. The court noted "Any legal proceeding arising in this contest thus acts as a powerful magnet, an opportunity for people who care about this divisive issue to express their opinions and vent their frustrations." (San Quentin State Prison)

U.S. District Court
DUE PROCESS

Nicholson v. Carroll, 458 F.Supp.2d 249 (D.Del. 2006). A state prisoner filed a petition for writ of habeas corpus, challenging the constitutionality of a disciplinary hearing that resulted in the imposition of discipline in the form of administrative segregation. The district court denied the inmate's petition, finding that the claim that he was denied an impartial disciplinary hearing, as guaranteed by the due process clause, was not cognizable on habeas review, where the disciplinary sanctions imposed against the prisoner did not involve any loss of good time credit, but only confinement to administrative segregation for 15 days. (Delaware Correctional Institution)

U.S. District Court
CONDITIONS
RESTRICTIONS

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 held that the officials did not deny the inmate's request to call an attorney, and thus did not violate the inmate's First Amendment right to access courts, where the officials made several attempts to contact the inmate's attorney but were told that she was too busy or did not want to speak to the inmate, the attorney had filed a motion to withdraw as the inmate's counsel, and the public defender's office informed the officials that the inmate was not a client. According to the court, the officials gave the inmate adequate law library time and legal assistance, and thus did not violate the inmate's First Amendment right to access courts, even though the inmate did not have access to the prison's legal resources 24 hours per day. The court noted that during a two-and-a-half month period, the inmate requested and received law library services 23 times, and had access to the law library 77 times. 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. District Court
RELIGION
RELIGIOUS SERVICES

Thunderhorse v. Pierce, 418 F.Supp.2d 875 (E.D.Tex. 2006). A Native American inmate brought a pro se action against state prison officials, alleging violations of his free exercise rights and of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment. The court held that prison officials did not violate the inmate's free exercise rights by requiring him to send a medicine bag obtained from a non-approved vendor through a unit warden's office for visual inspection. The court found that officials were not required to distinguish between those who practiced shamanism and those who did not, where only 1.66 percent of prisoners identified their religious preference as "Native

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American. (Texas Department of Criminal Justice, Institutional Division)

2007

U.S. District Court
LENGTH
LIBERTY INTEREST
DUE PROCESS

Bonet v. *Khahaifa*, 512 F.Supp.2d 141 (W.D.N.Y. 2007). A state inmate brought a § 1983 action against prison officials alleging denial of due process in connection with a disciplinary hearing that resulted in confinement in a special housing unit (SHU) and loss of good-time credits. The district court granted the defendants' motion for summary judgment. The court held that the inmate's 180-day confinement in the special housing unit (SHU) did not violate the inmate's procedural due process rights because it did not impose an atypical and significant hardship on the inmate, as required to establish interference with a due process liberty interest. (Attica Correctional Facility and Southport Correctional Facility, New York)

U.S. District Court
SEX DISCRIMINATION
SEXUAL HARASSMENT

Garrett v. *Department of Corrections*, 589 F.Supp.2d 1289 (M.D.Fla. 2007). A female employee brought gender discrimination and hostile work environment claims in state court against the Florida Department of Corrections (DOC) and the State of Florida under Title VII and the Florida Civil Rights Act. Following removal to federal court, the defendants moved for summary judgment. The district court granted summary judgment in part and denied in part. The court held that the DOC could be held liable for inmate sexual harassment directed at the female employee, particularly when the department refused to take appropriate corrective action. The court held that summary judgment was precluded by genuine issues of material fact as to whether the employee subjectively perceived the environment at a prison, in which male inmates made obscene comments and masturbated in front of her, to be severe and pervasive, and as to whether the inmate's conduct constituted objectively unreasonable sexual harassment. (Florida Department of Corrections, Lake Correctional Institution)

U.S. District Court
LENGTH
CONDITIONS

Hunt v. *Sapien*, 480 F.Supp.2d 1271 (D.Kan. 2007). An inmate sued prison officials, claiming that his confinement in administrative segregation for more than 850 days violated his right to due process in violation of the Fourteenth Amendment. The district court granted the officials' motion for summary judgment. The court held that confinement of the inmate in administrative segregation for over 850 days did not impose an atypical and significant hardship sufficient to deprive him of a protected liberty interest. The court noted that the inmate was placed in administrative segregation due to his involvement with a prison gang, he was not deprived of adequate clean clothing or food and was able to check out books, participate in some hobby craft projects, and participate in mental health programs, and placement in administrative segregation did not affect his parole eligibility. (El Dorado Correctional Facility, Kansas)

U.S. District Court
ACCESS TO COURT
DUE PROCESS

Koerschner v. *Warden*, 508 F.Supp.2d 849 (D.Nev. 2007). A state prisoner brought a motion for appointment of counsel for a federal habeas proceeding. The district court granted the motion. The court held that appointment of counsel was warranted in light of the serious, and potentially constitutionally suspect, limitations placed by the state prison on the due process right of access to courts by segregation-unit inmates. The court noted that access to court for inmates in segregation consisted of a new "paging system," under which inmates can request a maximum of five specified legal materials at a time, and the assistance of essentially untrained inmate legal assistants. (Lovelock Correctional Center, Nevada)

U.S. District Court
CONDITIONS
EXERCISE
MAIL
PROGRAMS
VISITS

Maddox v. *Berge*, 473 F.Supp.2d 888 (W.D.Wis. 2007). A state prisoner brought a civil rights action under § 1983 against prison officials and employees, alleging that his administrative confinement for participating in a riot violated his Eighth and Fourteenth Amendment rights. The court found that allegations that the prisoner was confined to his cell 23 hours a day and that he was denied "outside recreation" while he was in administrative confinement demonstrated injuries from an objectively serious deprivation, for the purposes of his conditions or confinement claim. The court held that the allegation that the prisoner was subjected to 24-hour illumination stated a claim for violation of his Eighth Amendment rights, although the prisoner did not allege that he suffered any adverse effects as a result of the lighting. According to the court, the lack of educational or rehabilitative programming while he was in administrative confinement did not deny the prisoner a minimal civilized measure of life's necessities, in violation of the Eighth Amendment. The court ruled that a prison requirement that the prisoner leave all of his outgoing nonlegal mail open to be inspected by prison officials did not violate the prisoner's First Amendment rights, where his outgoing mail was not censored or delayed. The court allowed the prisoner to proceed in forma pauperis on his claim that he was denied access to magazines and newspapers in violation of his First Amendment rights. The district court held that placement of the prisoner in administrative confinement, which subjected him to highly restricted non-face-to-face visits, lack of communication with other prisoners, nearly complete idleness in a cell that was constantly illuminated, lack of recreation, extremely limited out of cell time, and lack of access to any meaningful programming, was not clearly established as conduct that violated a prisoner's Eighth Amendment rights, and therefore the warden and secretary of the corrections department had qualified immunity from the prisoner's damages suit under § 1983. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
PLACEMENT
RETALIATION
TRANSFER

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
EXERCISE

Moore v. *Schuetzle*, 486 F.Supp.2d 969 (D.N.D. 2007). A state prison inmate brought a § 1983 action against officials, claiming cruel and unusual punishment and violation of his right of access to courts. The district court granted summary judgment in favor of the defendants. The court held that the Eighth Amendment rights of the inmate, who had been placed in administrative segregation, were not violated when he was limited to five hours of outside exercise per week. The court found that the inmate's right of access to courts, and right to counsel, were not violated when prison officials inadvertently opened letters to the inmate from a state court judge and the Department of Justice, on two occasions. (North Dakota State Penitentiary)

U.S. Appeals Court
PLACEMENT
PROTECTIVE CUSTODY

O'Brien v. *Indiana Dept. of Correction ex rel. Turner*, 495 F.3d 505 (7th Cir. 2007). A prisoner brought a § 1983 action against a department of correction and a warden arising from an attack by other inmates, alleging the warden was deliberately indifferent to his safety in violation of the Eighth Amendment. After denying the prisoner's motion to add additional defendants, the district court granted summary judgment for the defendants. The prisoner appealed. The appeals court affirmed, finding that the district court did not abuse its discretion in denying the motion to amend. The court found that the warden was not deliberately indifferent to a substantial risk of harm to the prisoner by placing the prisoner, who was a former prison guard convicted of rape and other charges, in a unit where other at-risk inmates were placed, notwithstanding that the prisoner was severely beaten by other inmates some four and one-half years after his placement in the unit. The court noted that prison staff initially brought the prisoner into segregation for his safety, and, having considered the nature of the threat against him and the availability of placing him among the at-risk population, the prison chose to place him with the other former police officers, guards, and prosecutors, a course of action that had been followed repeatedly in the past. (Wabash Valley Correctional Facility, Indiana)

U.S. District Court
CONDITIONS
EXERCISE
HYGIENE
RESTRAINTS

Platt v. *Brockenborough*, 476 F.Supp.2d 467 (E.D.Pa. 2007). A prisoner brought a § 1983 action against prison officials, alleging that he was repeatedly placed in punitive segregation, was not permitted to exercise regularly, and was denied an opportunity to appeal disciplinary decisions. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prison's failure to respond to the prisoner's numerous grievances regarding his conditions of confinement did not infringe on the prisoner's due process right of access to the courts, since the prisoner could file suit in federal court. The court found that the prisoner failed to state a due process claim based on denial of access to a prison law library, where the prisoner failed to explain even in minimal detail what injury he suffered as a result of the alleged denial of access. The court noted that access to the prison law library is not a freestanding right, and a prisoner challenging the denial of access must allege some actual injury to have standing to assert a claim on this basis.

The court found that the prisoner's allegations that he was placed in punitive segregation, denied the means to maintain a clean cell, was not permitted to shower regularly, and that he was shackled everywhere he went, failed to state a claim under the Eighth Amendment ban on cruel and unusual punishment. But the court held that the prisoner's allegations that he was allowed to exercise only twice every month, and for one hour each time, and that he suffered from depression and anxiety as a result of his placement in punitive segregation and the restrictions on exercise, stated a claim of cruel and unusual punishment in violation of the Eighth Amendment. (Philadelphia Industrial Correctional Center)

U.S. Appeals Court
DUE PROCESS
CONDITIONS

Stevenson v. *Carroll*, 495 F.3d 62 (3rd Cir. 2007). Three pretrial detainees filed a pro se § 1983 action against a warden, alleging that their placement in restrictive confinement violated their substantive and procedural due process rights. The district court dismissed the action and the detainees appealed. The appeals court vacated and remanded. The court held that the detainees' allegations stated a claim for violation of substantive due process rights and a claim for violation of procedural due process rights. The court remanded the case for consideration of the qualified immunity claim. The detainees alleged that they were punished prior to being sentenced by being placed in restrictive confinement, that they were subjected to lengthy stays in isolation with prisoners who had disciplinary problems or who were in protective custody, and that they were subjected to additional hardships that were not shared by the general prison population. The court found that the detainees' allegations were sufficiently factual to raise the detainees' right to relief above a speculative level. The detainees also alleged that they were placed in restrictive confinement indefinitely and removed from the general prison population while awaiting resentencing after their sentences were vacated, and that they were not given any explanation or opportunity to contest the restrictive placement. (Security Housing Unit [SHU], Delaware)

U.S. Appeals Court
CONDITIONS

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
CONDITIONS
ISOLATION
LENGTH

Wilkerson v. *Stalder*, 639 F.Supp.2d 654 (M.D.La. 2007). Two state prisoners brought Eighth Amendment claims for cruel and unusual punishment, and claims under state law, against state officials and prison officials, including the Secretary of the Louisiana Department of Public Safety and Corrections, a prison warden, and members of the lockdown review board, relating to the prisoners' extended lockdown of approximately 28 to 35 years in the prison's closed cell restriction (CCR) unit. The prisoners asserted deprivation of sleep, exercise, social contact, and environmental stimulation. Both prisoners had been charged with and convicted of murdering a correctional officer during a riot. The district court granted summary judgment to the defendants in part and denied in part. The court held that the Secretary of Louisiana Department of Public Safety and Corrections was not liable, as a supervisory official, to state prisoners under § 1983 for the alleged violation of the Eighth Amendment protection against cruel and unusual punishment, absent evidence that the Secretary was aware that the prisoners' extended lockdown allegedly was without a current legitimate penological justification. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoners' extended lockdown, for from approximately 28 to 35 years, in prison's closed cell restriction (CCR) unit deprived them of at least one of the basic human needs asserted by prisoners, i.e., sleep, exercise, social contact, or environmental stimulation. The court also found a genuine issue of material fact as to whether there was lack of legitimate penological justification for the extended lockdown of the prisoners, which was relevant to whether prison officials were deliberately indifferent to state prisoners' basic human needs. According to the court, prison officials had fair warning that continued confinement of the prisoners in extended lockdown for over 28 years could be constitutionally infirm, and thus, they were not entitled to qualified immunity from the prisoners' § 1983 claims alleging cruel and unusual punishment under the Eighth Amendment. (Louisiana State Penitentiary at Angola, Louisiana)

2008

U.S. Appeals Court
EVIDENCE
PLACEMENT

Amrine v. Brooks, 522 F.3d 823 (8th Cir. 2008). A prisoner sued a prison investigator and deputy sheriff under § 1983 alleging that they violated his constitutional rights during an investigation of a prison stabbing, for which the prisoner was convicted and sentenced to death, but later exonerated during a habeas proceeding. Following the death of the investigator, his estate was substituted as a party. The district court denied the prisoner's motion to alter or amend judgment and the prisoner appealed. The court held that the investigator and deputy were qualifiedly immune from the prisoner's claim of unreasonable seizure, assuming that the prisoner's placement in a detention cell by the investigator and deputy pursuant to the investigation of a prison stabbing was an arrest that was supported by arguable probable cause, The court noted that inculpatory evidence against the prisoner included evidence of a motive to kill the victim and exculpatory evidence included the officer's identification of a third inmate as the inmate whom the victim was chasing, such that more than a minimal investigation was required. (Missouri Department of Corrections)

U.S. District Court
DUE PROCESS
PLACEMENT IN SEGREGATION
RETALIATION
REVIEW
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 placement in ASU, and the six-month interval between reviews of the inmate's retention, did not violate due process. The court held that placement of the inmate in ASU for eighteen months was not in retaliation for the inmate's refusal to cooperate in a prison narcotics investigation, and therefore did not violate the inmate's due process rights, where prison officials kept the inmate in ASU in order to maintain the integrity of an investigation involving the inmate's mother, an unknown number of prison guards, and at least one other inmate. The court noted that the inmate was serving a 33-year sentence and that confinement in ASU did not affect the inmate's release date. 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. (California State Prison, Los Angeles County)

U.S. District Court
DUE PROCESS
LENGTH
LIBERTY INTEREST

Carmon v. *Duveal*, 554 F.Supp.2d 281 (D.Conn. 2008). A state inmate brought a § 1983 action against several prison officials, alleging various violations of his constitutional rights. The court held that absent any showing that he was actually injured by a prison counselor's refusal to notarize certain court documents, the inmate was not deprived of his constitutional right of access to the courts. According to the court, although the counselor's refusal to notarize the papers was due to the inmate's failure to submit necessary documentation, the inmate did not thereafter submit such documentation, he did not allege that the request for documentation was improper, and he did not show how the lack of notarization hindered his efforts to pursue his legal claims. The court held that the inmate's allegation that he remained in administrative segregation for more than 19 months as the result of a correction official's acts of improperly overruling a decision made at an administrative segregation hearing, and improperly finding that the inmate's alleged assault on a correctional officer was sexual in nature, stated a § 1983 claim for a due process violation, even though the inmate did not assert additional facts indicating the nature of the conditions of that segregation. The court found that the prolonged period of segregation might implicate a protected liberty interest. (Cheshire Correctional Inst., Connecticut)

U.S. District Court
SEPARATION

Cerniglia v. *County of Sacramento*, 566 F.Supp.2d 1034 (E.D.Cal. 2008). A detainee who was involuntarily confined as a sexually violent predator (SVP) under California law brought a § 1983 action, alleging that his conditions of confinement in a total separation unit in a county jail violated his constitutional rights. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court reversed and remanded. On remand, the district court granted partial summary judgment in favor of the detainee on liability issues. The detainee moved to bar presentation of evidence to the jury of his status as an SVP. The district court granted the motion, finding that the detainee's SVP status was not relevant to the issue of whether his conditions of confinement were reasonably related to legitimate, non-punitive governmental interests, and that the probative value of the detainee's status as an SVP was outweighed by the danger of unfair prejudice. (Sacramento County Jail, California)

U.S. Appeals Court
PLACEMENT
PROTECTIVE CUSTODY

Dale v. *Poston*, 548 F.3d 563 (7th Cir. 2008). A federal prison inmate brought a Bivens action against several corrections officers, alleging deliberate indifference in violation of the Eighth Amendment based on the officers' failure to prevent an assault by a fellow inmate. Following a jury verdict for the inmate on the issue of administrative exhaustion, the district court granted summary judgment for the officers. The inmate appealed. The appeals court affirmed. The court found that the subjective prong of the inmate's claim was unsatisfied, since the inmate had given the officers inadequate details of the danger involved. The prisoner told officers that other inmates were "pressuring" him and "asking questions," but never gave more details despite the officers' requests, preventing them from determining whether a true threat was at play. The inmate declined offers to remain in protective custody. (Federal Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
DUE PROCESS
LENGTH
REVIEW

Harden-Bey v. *Rutter*, 524 F.3d 789 (6th Cir. 2008). A state prisoner brought a § 1983 action against several prison officials challenging his placement and continued confinement in administrative segregation. The district court dismissed the action, and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's allegation that he was indefinitely placed in administrative segregation alleged an atypical and significant hardship. The appeals court remanded the case to the district court to consider the due process claim. (Michigan Department of Corrections, Alger Maximum Correctional Facility)

U.S. District Court
SEARCHES

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 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
DUE PROCESS
MEDICAL TREATMENT

Hernandez v. Velasquez, 522 F.3d 556 (5th Cir. 2008). A state prisoner brought a § 1983 action alleging violations of his Eighth Amendment and due process rights. The district court granted summary judgment to all defendants and the prisoner appealed. The appeals court affirmed. The court held that the prisoner failed to show that he was placed at a substantial risk of serious harm when he was placed on lockdown status for 13 months, and therefore he could not show deliberate indifference on the part of prison personnel to his health or safety, as required for prison personnel to be liable under § 1983 for imposing conditions of confinement that constituted cruel and unusual punishment under the Eighth Amendment. The court noted that even if the prisoner suffered from muscle atrophy, stiffness, loss of range of motion and depression, there was no indication that those conditions posed a substantial risk of serious harm. The court held that the prisoner failed to show that his confinement on lockdown status for 13 months posed an atypical or significant hardship on him in relation to the ordinary incidents of prison life, and he was therefore not deprived of a cognizable due process liberty interest. According to the court, even if the prisoner was confined to a shared cell with permission to leave only for showers, medical appointments and family visits, his assignment to lockdown was well within the range of confinement to be normally expected for a prisoner serving a life sentence for capital murder. (Texas Department of Criminal Justice, Polunsky Unit)

U.S. District Court
ASSIGNMENT
EVIDENCE
PROGRAMS
RETALIATION

Lindell v. *Schneiter*, 531 F.Supp.2d 1005 (W..D.Wis. 2008). A prison inmate brought a § 1983 action against state prison employees, claiming violations of his Eighth and First Amendment rights. The defendants moved for summary judgment. The court granted the motion in part and denied the motion in part. The court held that the employees did not exhibit deliberate indifference to the medical condition of the inmate, in violation of the Eighth Amendment, by limiting him to 2.5 hours of exposure to sunlight per week. The court found that the inmate failed to show a health risk associated with his being forced to use unwashed outerwear when exercising. The court ruled that summary judgment was precluded by fact issues as to whether a corrections officer directly told the inmate that he was being denied access to a desired program because he filed complaints, whether another officer failed to intervene when the inmate was told he was being retaliated against, and as to the existence of direct evidence of retaliation. The court noted that there was evidence that two prison security officers directly stated that the inmate was being placed in restricted housing and denied participation in a desired program because he brought administrative complaints. (Wisconsin Secure Program Facility)

U.S. Appeals Court
RELIGIOUS SERVICES
EXERCISE

Pierce v. County of Orange, 519 F.3d 985 (9th Cir. 2008). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims and the detainees appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the injunctive orders relating to the jail's reading materials, mattresses and beds, law books, population caps, sleep, blankets, dayroom access (not less than two hours each day), telephone access and communication with jailhouse lawyers were not necessary to correct current ongoing violations of the pretrial detainees' constitutional rights. Inmates had alleged that they were denied the opportunity for eight hours of uninterrupted sleep on the night before and the night after each court appearance. The court found that an injunction relating to restrictions of the detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. According to the court, providing pretrial detainees housed in administrative

segregation only ninety minutes of exercise per week, less than thirteen minutes per day, constituted punishment in violation of due process standards. The court also found that the county failed to reasonably accommodate mobility-impaired and dexterity-impaired pretrial detainees in violation of the Americans with Disabilities Act (ADA). The court affirmed termination of 12 of the injunctive orders, but found that the district court erred in its finding that two orders were unnecessary. (Orange County, California)

U.S. Appeals Court
DUE PROCESS
EXERCISE
RELIGIOUS SERVICES
RESTRICTIONS

Pierce v. *County of Orange*, 526 F.3d 1190 (9th Cir. 2008). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff, seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims, and the detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that injunctive orders relating to the county jail's reading materials, mattresses and beds, law books, population caps, sleep, blankets, telephone access, and communication with jailhouse lawyers were not necessary to current the current and ongoing violations of pretrial detainees' constitutional rights. The court found that an injunction relating to restrictions of detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. The injunctive order, with its provision for the curtailment or elimination of pretrial detainees' religious rights based on security concerns, provided for no more than a minimum level of ongoing participation in religious activities. The court held that providing pretrial detainees housed in administrative segregation only 90 minutes of exercise per week, less than 13 minutes per day, constituted punishment in violation of due process standards. The court found that an order requiring that inmates in administrative segregation be permitted exercise at least twice each week for a total of not less than 2 hours per week was necessary to correct the current and ongoing violation. (Orange County Jail System, California)

U.S. District Court
CONDITIONS
ISOLATION

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 detainee alleged that his mail was opened and returned to him, thereby impeding his ability to communicate with his attorney, that his placement in close custody limited his ability to access legal materials, and that his placement in segregation barred him from contacting his attorney and potential witnesses. The district court dismissed in part. The court held that the inmate did not state a First Amendment claim for deprivation of access to courts, absent an allegation of actual injury in connection with his challenge to his conviction or sentence. 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. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Townsend v. Fuchs, 522 F.3d 765 (7th Cir. 2008). A state inmate filed a civil rights suit against a prison official and a correctional officer alleging violation of his due process rights in placing him in administrative segregation for 59 days, and violation of his Eighth Amendment right against cruel and unusual punishment due to unsanitary conditions in segregation. The district court granted the official's motion for partial summary judgment. The court later denied the inmate's motion to amend to add a warden as a defendant and entered summary judgment for the prison official and correctional officer. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the discretionary placement of the inmate in non-punitive administrative segregation for 59 days while officials investigated his possible role in a prison riot did not give rise to a liberty interest entitled to protection under procedural due process. The court noted that the federal Constitution does not create a liberty interest in avoiding transfer within a correctional facility. However, the court found that the inmate's sleeping on a moldy and wet mattress involved a sufficiently serious prison condition to deny a civilized measure of life's necessities, as required for an Eighth Amendment claim. The court held that summary judgment on the issue of deliberate indifference was precluded by a genuine issue of material fact as to whether a correctional officer knew about the condition of the inmate's wet and moldy mattress. (New Lisbon Correctional Institution, Wisconsin)

2009

U.S. Appeals Court
ACCESS TO COURT
DUE PROCESS
LAW LIBRARY
RETALIATION

Bandy-Bey v. *Crist*, 578 F.3d 763 (8th Cir. 2009). A state prisoner brought a § 1983 action against prison officials. The district court awarded summary judgment for the officials, and the prisoner appealed pro se. The appeals court affirmed. The court held that the discipline imposed on the inmate for his alleged misrepresentations about a prison official in an officer kite form, in stating that the officer insisted that the inmate write his legal documents by hand, was not retaliatory. The court noted that the officer's directly contradictory incident report provided "some evidence" to support the disciplinary action. According to the court, the discipline imposed on the inmate for his alleged failure to follow an officer's direct order to go to another officer's office was not retaliatory, where the undisputed evidence showed that the inmate failed to follow the direct order. The court held that the inmate was not deprived of substantive due process, where he was not deprived of access to the courts and was not subjected to retaliatory discipline, and the disciplinary sanctions of 10 and 15 days' segregation imposed on him that prevented him from using the law library did not impede his ability to pursue a non-frivolous claim or offend a protected liberty interest. (Minnesota Correctional Facility in Lino Lakes, Minnesota)

U.S. District Court
CONDITIONS
HYGIENE
PLACEMENT
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. Appeals Court
RELIGION
RELIGIOUS SERVICES
RESTRICTIONS

Crawford v. *Clarke*, 578 F.3d 39 (1st Cir. 2009). Muslim inmates confined in a special management unit (SMU) sued the Commissioner of the Massachusetts Department of Correction (DOC) under the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he violated their right to freely exercise their religion by preventing them from participating in Jum'ah Friday group prayer. The district court entered an injunction requiring closed-circuit broadcasting of Jum'ah in any SMU in which the plaintiff inmates were housed or might be housed in the future, and subsequently denied the commissioner's motion for reconsideration. The commissioner appealed. The appeals court affirmed. The appeals court held that the district court did not abuse its discretion in issuing the injunction requiring corrections officials to provide closed circuit television broadcasts of services in any SMU in which the plaintiff inmates were housed or might be housed in the future, as opposed to the SMU in which they were currently housed, without making findings as to whether other SMUs were suitable for closed circuit broadcasts. The court found that the injunction did not violate the Prison Litigation Reform Act (PLRA), where the prospective relief was narrowly drawn and providing closed-circuit broadcasting was the least intrusive means to alleviate the burden on the inmates' rights. The court noted that the commissioner put nothing in the record to differentiate other SMUs on the issues of a compelling governmental interest or least restrictive means. (Massachusetts Department of Correction, MCI-Cedar Junction)

U.S. Appeals Court
CONDITIONS
DUE PROCESS

Davis v. *Barrett*, 576 F.3d 129(2nd Cir. 2009). A state prisoner brought a pro se § 1983 action against a state department of correctional services (DOCS) hearing officer, seeking damages for the alleged abridgment of his procedural due process rights in connection with a disciplinary hearing resulting in the prisoner's administrative segregation for 55 days. The district court granted summary judgment in favor of the hearing officer and the prisoner appealed. The appeals court vacated and remanded. The court held that the prisoner adequately exhausted his administrative remedies by filing an administrative appeal following his administrative disciplinary hearing. The court noted that state prison regulations did not allow the prisoner to separately grieve the hearing officer's alleged conduct in presiding over the hearing, and the prisoner was not required to grieve separately the conditions of his administrative confinement to satisfy the exhaustion requirement under the Prison Litigation Reform Act. The court found that summary judgment was precluded by a genuine issue of material fact as to the actual conditions of the prisoner's segregated confinement for 55 days, imposed following a disciplinary hearing. (Elmira Correctional Facility, New York)

U.S. District Court
CONDITIONS
DUE PROCESS
ISOLATION
LIBERTY INTEREST

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
CONDITIONS

Greene v. *Furman*, 610 F.Supp.2d 234 (W.D.N.Y. 2009). A state inmate brought a pro se § 1983 action against corrections officials, alleging various constitutional violations arising out of disciplinary proceedings instituted after he allegedly spit at another inmate. The district court dismissed the case. The court held that an allegation that a corrections officer issued a false misbehavior report against the inmate failed to state a claim for a due process violation. The court noted that the issuance of false misbehavior reports against an inmate by corrections officers is insufficient on its own to establish a denial of due process. According to the court, the allegation that the inmate, who was being escorted to a mental health appointment when he became involved in an altercation with another inmate and was not allowed to continue to his appointment, failed to state a claim for an Eighth Amendment violation. The court found that any delay in the inmate's mental health treatment did not cause him actual harm or put his health at risk, and there was no evidence that the delay resulted from any sadistic or

otherwise impermissible motive. The court held that the allegation that the inmate was denied exercise, showers and haircuts after he became involved in an altercation with another inmate failed to state a claim for an Eighth Amendment violation based on his conditions of confinement, where the deprivations alleged were not atypical, did not result in any physical injury, and did not amount to cruel and unusual punishment. Southport Correctional Facility, New York)

U.S. Appeals Court
EQUAL PROTECTION
FREE SPEECH
RESTRICTIONS

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. District Court
PROTECTIVE CUSTODY
RELIGION
RELIGIOUS SERVICES

Houseknecht v. *Doe*, 653 F.Supp.2d 547 (E.D.Pa. 2009). An inmate brought an action against current and former deputy wardens alleging they violated his right to freely exercise his religion under the First Amendment. The defendants moved for summary judgment. The court granted the motion in part and denied in part. The court held that the restriction of the inmate's religious rights due to his election to enter into protective custody, under which there were no formal religious ceremonies or formal classes similar to those provided to general population inmates, was rationally related to legitimate penological interest in maintaining security and order, and thus did not violate inmate's First Amendment right to free exercise of religion. According to the court, it was reasonable for an inmate who opted for more protective conditions to enjoy fewer amenities. The court noted that the inmate had regular communication with a chaplain who regularly brought reading materials to the inmates in protective custody, and the inmate was not prevented from sitting with other inmates and doing his own Bible study in the unit day room. The court held that it could not require the prison to permit inmates in protective custody to attend formal gatherings with other inmates, given the purpose of protective custody to segregate inmates who believed that other inmates posed a danger to them, and the provision of additional reading materials or access to additional religious media programming could likely not be accomplished without significant cost. The court found that the Inmate's religious exercise was not substantially burdened by his election to enter into protective custody, under which there were no formal religious ceremonies or formal classes similar to those provided to general population inmates, as required to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found that there was no suggestion that prison officials placed substantial pressure on the inmate to substantially modify his behavior or to violate his beliefs, he was not forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates, and he acknowledged that he received and read the inmate handbook, which advised that protective custody carried with it restrictions on religious access. (Berks County Prison, Pennsylvania)

U.S. District Court
CONDITIONS

Sital v. *Burgio*, 592 F.Supp.2d 355 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against corrections officers, a hearing officer, and a deputy superintendent employed by New York State Department of Correctional Services (DOCS). The defendants moved for summary judgment on all claims, and the prisoner moved for summary judgment on all but one of his claims. The district court granted the defendants' motion for summary judgment. The court held that no evidence supported a finding that alleged false disciplinary reports were issued with a retaliatory motive. The court held that the conditions of the prisoner's confinement in a drug-watch room, where he was held for six days so that officers could examine his feces to see if they contained drugs, and during his nine-month stay in a special housing unit (SHU) did not constitute violations of his Eighth Amendment right to be free from cruel and unusual punishments giving rise to the § 1983 claim. According to the court, although the conditions were unpleasant, evidence did not support a finding that the conditions were particularly severe, or that they jeopardized the prisoner's health or safety. The court found that legitimate penological interests of maintaining prison security and discipline, particularly concerning the suspected smuggling and possession of illegal drugs, outweighed any privacy right enjoyed by a state prisoner, and thus the prisoner failed to state a § 1983 claim related to the prisoner being forced to defecate in full view of other persons in the drug-watch room. (Attica Correctional Facility. New York)

U.S. Appeals Court
MEDICAL TREATMENT

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)

2010

U.S. District Court
CONDITIONS
DUE PROCESS
EQUAL PROTECTION
LENGTH
LIBERTY INTEREST

Dodge v. *Shoemaker*, 695 F.Supp.2d 1127 (D.Colo. 2010). A state prisoner brought a § 1983 action, proceeding in forma pauperis, against prison officials, alleging that she was raped by a lieutenant while incarcerated, and asserting various due process, equal protection, and Eighth Amendment violations. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the issue of whether the state prisoner's placement in administrative segregation for a period of one year violated her due process rights could not be determined at the motion to dismiss stage of the prisoner's § 1983 action against prison officials, because of a factual dispute as to whether the duration of confinement was atypical and significant. According to the court, the contours of constitutional law were sufficiently clear that the state prison officials were on notice that assignment of a prisoner to administrative segregation under conditions that imposed a significant and atypical hardship in relation to the ordinary incidents of prison life could give rise to a liberty interest protected by due process, and, thus, the officials were not entitled to qualified immunity in the prisoner's § 1983 action, with respect to her due process claim.(Denver Women's Correctional Facility, Colorado)

U.S. District Court
DIET

Greene v. *Esgrow*, 686 F.Supp.2d 240 (W.D.N.Y. 2010). A state inmate filed a § 1983 action alleging that prison officials improperly executed a restricted-diet disciplinary sentence. The district court granted the officials' motion to dismiss. The court held that imposition of a forty-two meal restricted-diet disciplinary sentence did not amount to cruel and unusual punishment, in violation of the Eighth Amendment, absent a showing that the food that inmate was given was nutritionally inadequate, or that his health was adversely affected or jeopardized by his being placed on the restricted diet. (New York State Department of Correctional Services, Southport Correctional Facility)

U.S. Appeals Court
ACCESS TO COURTS
EXERCISE
LAW LIBRARY

Hebbe v. *Pliler*, 627 F.3d 338 (9th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging denial of his right to court access and violations of the Eighth Amendment. The district court granted the defendants' motion to dismiss and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's allegations that prison officials denied him access to a prison law library while the facility was on lockdown, and that he was prevented from filing a brief in support of his state court appeal of his conviction, were sufficient to plead an actual injury as required to state a claim for violation of his First Amendment right to court access, and his Fourteenth Amendment right to due process. The court held that allegations by the state prisoner that prison officials forced him to choose between spending eight hours per week for eight months on either exercising outdoors or using the law library to research his § 1983 complaint and state-law habeas petition were sufficient to plead claim of an Eighth Amendment violation. (California State Prison-Sacramento C-Facility)

U.S. Appeals Court
DUE PROCESS
LENGTH
LIBERTY INTEREST
MEDICAL TREATMENT
PSYCHIATRIC CARE

Orr v. *Larkins*, 610 F.3d 1032 (8th Cir. 2010). An inmate brought a § 1983 claim against prison officials alleging his rights under the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment were violated when he was kept in administrative segregation for nine months. The district court dismissed the complaint as frivolous and the inmate appealed. The appeals court affirmed. The court held that the inmate's nine-month stay in administrative segregation did not constitute an atypical and significant hardship when compared to the burdens of ordinary prison life, as required to support the inmate's claim that his liberty interests under the Fourteenth Amendment were violated. The court found that prison officials who provided the inmate with anti-depressants, and later with anti-psychotic medication, during his nine-month stay in administrative segregation, were not deliberately indifferent to the inmate's worsening mental illness, as required to support the inmate's Eighth Amendment claim. (Eastern Reception, Diagnostic and Correctional Center, Missouri)

U.S. District Court
RETALIATION
FREE SPEECH
RELIGION

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 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, California Department of Corrections)

U.S. District Court
ISOLATION
LIBERTY INTEREST
TRANSFER
LENGTH
CONDITIONS

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
RETALIATION
CONDITIONS

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

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
DUE PROCESS
CONDITIONS

U.S. v. *Marion*, 708 F.Supp.2d 1131 (D.Or. 2010). An inmate who was charged with assaulting a fellow inmate moved to suppress evidence for lack of a Miranda warning during administrative interviews and disciplinary proceedings at the prison. The district court held that the inmate, who was housed in a segregated housing unit (SHU), was "in custody" for the purposes of Miranda, granting the inmate's motion. The court noted that SHU confinement imposed severe restrictions on the inmate's movements within the prison and the inmate's transfer to SHU limited the freedom of movement he enjoyed when housed with the general prison population. The court noted that in SHU, the inmate was in his cell 23 hours a day, could not eat with other prisoners, could not access the same type of recreation or converse with other prisoners, and could not move freely to the various destinations in the prison. (Federal Correctional Institution, Sheridan, Oregon)

U.S. District Court
LIBERTY INTEREST

Webster v. *Fischer*, 694 F.Supp.2d 163 (N.D.N.Y. 2010). An inmate brought a civil rights action against prison officials, alleging discrimination, retaliation, harassment, and violations of his constitutional rights, federal statutes, state law, and regulations. The inmate sough declaratory judgment and injunctive relief, as well as money damages in the amount of $500,000. The district court granted the defendants' motion for summary judgment. The court held that misbehavior reports and disciplinary actions were not in retaliation for the inmate's participation in an inmate liaison committee, where the inmate was found guilty of the charges in the misbehavior reports based on admissions at a disciplinary hearing. The court found that the inmate did not suffer from the infliction of any physical injury or pain as a result of a corrections officers' allegedly harassing conduct. According to the court, the inmate did not suffer deprivation of a constitutionally protected liberty interest by confinement in a special housing unit for 90 days. The court held that the inmate's sleep apnea was not sufficiently serious to warrant Eighth Amendment protection, where the inmate admitted that he did not use a breathing machine for a 90-day period that he was confined to a special housing unit, and there was no evidence that the inmate experienced any physical deterioration or other consequences as a result of the lapse in treatment. The court held that there was no evidence that the inmate was placed on a mail watch or that any of his mail was illegally opened or intentionally misdirected. (Cayuga Correctional Facility, New York State Department of Correctional Services)

2011

U.S. District Court
DUE PROCESS
HEARING
PLACEMENT

Abdur-Raheem v. *Selsky*, 806 F.Supp.2d 628 (W.D.N.Y. 2011.) A prisoner brought a § 1983 action against state prison employees, alleging various constitutional violations. The employees moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's allegations that he did not receive a written recommendation that he be administratively segregated for security reasons, and that he was not informed of the hearing concerning administrative segregation until the day of the hearing, sufficiently alleged that he was denied the opportunity to prepare and present a defense to allegations contained in the recommendation, and thus stated cause of action against a state prison official for a due process violation. (Elmira Correctional Facility, New York State Department of Correctional Services)

U.S. District Court
CONDITIONS
DUE PROCESS
REVIEW
PRIVILEGES

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
DUE PROCESS
EVIDENCE
PLACEMENT IN SEGREGATION

Collins v. *Ferguson*, 804 F.Supp.2d 134 (W.D.N.Y. 2011.) A state prisoner brought a § 1983 action asserting due process claims against the Commissioner of a state Department of Correctional Services (DOCS) and corrections officers. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's allegations that the official who conducted his disciplinary hearing refused to provide him with documents relating to the testing of his urine sample, that he refused to ask witnesses certain "vital" questions that the prisoner had requested, that he continually rephrased questions to the officer witnesses in a way that was designed to elicit answers that were detrimental to the prisoner's defense, and that he accepted the officers' testimony at face value, without any corroborating documentary support, were sufficient to state a due process claim against the official. The court found that the prisoner's allegation that the Commissioner of the state Department of Correctional Services (DOCS) initially modified the result of the prisoner's superintendent's hearing, and later reversed that result after the prisoner had served his full sentence of 180 days in a Special Housing Unit (SHU), was sufficient to state a due process claim against the Commissioner. (Five Points Correctional Facility, New York)

U.S. District Court
CONDITIONS

Holmes v. *Fischer*, 764 F.Supp.2d 523 (W.D.N.Y. 2011). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by subjecting him to non-random urinalysis drug testing, confining him in a special housing unit (SHU), and denying medical care. The defendants moved for a more definite statement, to strike the complaint, and to dismiss. The district court denied the motion. The inmate alleged that, while incarcerated in a special housing unit (SHU): (1) he was routinely cuffed from behind, aggravating left shoulder and leg conditions resulting from previous injuries, (2) he was subjected to continuous illumination in his cell, rendering it impossible to sleep; (3) officials interfered with the inmate grievance he attempted to file regarding constant SHU cell illumination; (4) he was denied dental floss; (5) he was denied, during winter months, proper boots, gloves, hat, and thermos; (6) he was exposed to feces thrown by mentally-ill inmates confined to SHU; (7) he was denied proper medical treatment and tests; and (8) he was subjected to urinalysis testing which so traumatized him as to cause physical harm. The court held that these allegations were sufficient to state claims under the Eighth Amendment for cruel and unusual punishment and deliberate indifference to necessary medical care. According to the court, the inmate's allegations that he was subjected to urinalysis based on reports from confidential informants whose credibility and reliability had not been confirmed, despite the complete absence of any history of drug use, and that two random urinalysis tests to which he was subjected were done to retaliate against him for filing inmate grievances regarding non-random urinalysis testing, were sufficient to state an unreasonable search claim under the Fourth Amendment, The court found that the inmate's allegation that, as a result of repeated non-random urinalysis drug testing to which he was subjected, he suffered physical harm, including insomnia, nausea, headaches, burning eyes, aggravation of an old gunshot wound, inability to exercise, and appetite loss, was sufficient to state a cruel and unusual punishment claim under the Eighth Amendment. (Elmira Correctional Facility, and Southport Correctional Facility, New York)

U.S. Appeals Court
ACCESS TO COURTS
LAW LIBRARIES

McCree v. *Grissom*, 657 F.3d 623 (7th Cir. 2011). A federal inmate brought a Bivens action against prison officers, alleging denial of access to the courts. The district court dismissed the complaint and the inmate appealed. The appeals court affirmed. The court held that the inmate was not denied access to the courts in his previous § 1983 action by being placed in special housing, which had a new research system he did not know how to use and he was not instructed in its use. The court noted that the inmate filed a notice of appeal, a motion to proceed in forma pauperis, a motion to reconsider the denial of that motion, and a motion to suspend appeal. (Federal Correctional Institution Greenville, Illinois)

U.S. District Court
MAIL
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 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. (Ionia Maximum Correctional Facility, Kinross Correctional Facility, Standish Correctional Facility, Michigan)

U.S. Appeals Court
RECREATION

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. District Court
DUE PROCESS
LIBERTY INTEREST

Thomas v. *Calero*, 824 F.Supp.2d 488 (S.D.N.Y. 2011). An inmate at a state prison filed a pro se § 1983 action against prison officials alleging that they violated his civil rights by filing false misbehavior reports, testifying falsely at his disciplinary hearing, denying him the right to call two witnesses at the hearing, then affirming the findings of the hearing. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the inmate had no constitutional right to be free from false testimony at a disciplinary hearing; (2) the inmate's confinement in a special housing unit (SHU) for 291 days was sufficient, for pleading purposes, to implicate a liberty interest; (3) his complaint stated claim for a due process violation in the disciplinary hearing; and (4) the complaint sufficiently alleged the personal involvement of a prison official in an ongoing constitutional violation, as required to state claim against the prison's director of special housing for violation of the inmate's due process rights. (Department of Correctional Services, Special Housing Unit, Sing Sing Correctional Facility, New York)

U.S. District Court
DUE PROCESS
CONDITIONS

Troy D. v. *Mickens*, 806 F.Supp.2d 758 (D.N.J. 2011.) Two juvenile delinquents brought a § 1983 action against mental health providers and the New Jersey Juvenile Justice Commission (JJC), alleging that the actions of the defendants while the delinquents were in custody violated the Fourteenth Amendment and New Jersey law. One of the plaintiffs was 15 years old when he was adjudicated as delinquent and remained in custody for a total of 225 days. For approximately 178 of those days, the delinquent was held in isolation under a special observation status requiring close or constant watch, purportedly for his own safety. Although the delinquents were placed in isolation for different reasons, the conditions they experienced were similar. Each was confined to a seven-foot-by-seven-foot room and allowed out only for hygiene purposes. The rooms contained only a concrete bed slab, a toilet, a sink, and a mattress pad. One delinquent was allegedly held in extreme cold, and the other was allegedly isolated for four days in extreme heat. Both were denied any educational materials or programming, and were prevented from interacting with their peers. One delinquent's mattress pad was often removed, a light remained on for 24 hours a day, and he was often required to wear a bulky, sleeveless smock. Both delinquents were allegedly denied mental health treatment during their periods in isolation.

The defendants filed a motion for summary judgment. The district court denied the motion. The court held that there was no evidence that a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities was educated about filing a form with a social worker as the procedure for filing an administrative grievance, as required for the procedure to be available to the delinquent to exhaust his § 1983 claims against JJC and mental health providers. The court also found that there was no evidence the New Jersey Juvenile Justice Commission (JJC) provided written notice to the juvenile delinquent housed at JJC facilities of the opportunity to appeal their disciplinary sanctions, which would have triggered the requirement that he appeal each sanction within 48 hours of notice, as required to exhaust administrative remedies.

The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers were deliberately indifferent towards conditions of confinement, in protecting and in providing medical care for the juvenile delinquent housed in JJC facilities; (2) whether placing the juvenile delinquent housed in temporary close custody and special observation status implicated a liberty interest; (3) whether a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities had procedural due process protections available to him upon a change of status; (4) whether the juvenile delinquent had a liberty interest implicated in his transfer to a more restrictive placement; (5) whether the juvenile delinquent had sufficient procedural due process protections available to him upon transfer to a more restrictive placement; and (6) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers acted with malice or reckless indifference. (New Jersey Juvenile Justice Commission, Juvenile Medium Security Facility, New Jersey Training School, Juvenile Reception and Assessment Center)

U.S. Appeals Court
LENGTH
REVIEW
DUE PROCESS

Williams v. *Hobbs*, 662 F.3d 994 (8th Cir. 2011). A state inmate brought a § 1983 action against deputy director of a department of correction and various wardens alleging that his approximately 14-year continuous detention in administrative segregation violated his procedural due process rights. Following a bench trial, the district court found that four of the five defendants had denied the inmate due process, awarded $4,846 in nominal damages, and denied punitive damages. Both parties appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate's administrative segregation reviews were not meaningful under the due process clause. The court noted that one warden testified that the inmate's seven-years' worth of clean history was irrelevant to him, another warden confirmed that even if the inmate proved to be a model prisoner his vote would always be that the inmate remain in administrative segregation in light of his past transgressions, and the wardens failed to explain to the inmate with any specificity why he constituted a continuing threat to the security and good order of prison. The court found that the director conducted his

review in a meaningful fashion. The court ruled that the inmate was not entitled to a per-day nominal damages award for each day spent in administrative segregation, and that the district court did not abuse its discretion by not awarding punitive damages. (Tucker Maximum Security Unit, Arkansas)

2012

U.S. District Court
EXERCISE
LENGTH
LIBERTY INTEREST
MEDICAL TREATMENT
PROGRAMS

Anderson v. *Colorado, Dept. of Corrections*, 848 F.Supp.2d 1291 (D.Colo. 2012). An inmate brought an action against a state, the Department of Corrections (DOC), the DOC's director, and a warden asserting violations of the Eighth and Fourteenth Amendments as well as violations of the Americans with Disabilities Act (ADA) and Rehabilitation Act. The inmate moved for partial summary judgment and to reopen discovery, and the defendants moved for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the maximum security prison's denial of outdoor exercise to the inmate for the more than 11 years of his incarceration was sufficiently serious and whether prison officials acted intentionally or with deliberate indifference. The court also found genuine issues of material fact as to whether the inmate's lack of outdoor exercise during his 11 years of incarceration caused his muscles to grow weaker, on the grounds that the inmate could demonstrate a physical injury. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials arbitrarily administered a demerit program that would allow the inmate to progress to higher levels and ultimately out of administrative segregation and into the general population, depriving him of a liberty interest without the due process guaranteed by the Fourteenth Amendment. The court held that summary judgment was also precluded by genuine issues of material fact as to whether a primary reason that the inmate had not progressed out of administrative segregation and into the general population was that he was denied a prescribed non-formulary medication, such that his mental illness was improperly and inadequately treated, and whether prison officials were deliberately indifferent to the inmate's serious mental health condition when he did not receive certain medications prescribed by physicians for the treatment of his mental illness. The court also held that summary judgment was precluded by genuine issues of material fact as to whether the inmate received adequate treatment for his mental illness, with regard to his Rehabilitation Act and ADA claims against the state and prison officials. (Colorado State Penitentiary)

U.S. District Court
EXERCISE
DUE PROCESS
LIBERTY INTEREST
MEDICAL TREATMENT
CONDITIONS

Anderson v. *Colorado*, 887 F.Supp.2d 1133 (D.Colo. 2012). A mentally ill inmate sued a state, its Department of Corrections (DOC), the DOC's director, and a warden, asserting claims for alleged violations of due process, the Eighth Amendment bar against cruel and unusual punishment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following a bench trial, the district court held that: (1) denying the inmate in administrative segregation any opportunity to be outdoors and to engage in some form of outdoor exercise for period of 12 years was a serious deprivation of a human need; (2) the defendants were deliberately indifferent to the inmate's mental and physical health; (3) the inmate failed to establish that he was denied a necessary and appropriate medication in violation of ADA and the Rehabilitation Act; (4) the defendants had to assign a bdepartment psychiatrist to reevaluate the inmate's current mental health treatment needs and take steps concluded to be appropriate in the psychiatrist's medical judgment; (5) the inmate failed to establish a violation of his rights under the Eighth Amendment, ADA, and the Rehabilitation Act due to the alleged denial of treatment provided by a multidisciplinary treatment team; (6) the inmate had a due process-protected liberty interest in progressing out of administrative segregation; and (7) the new stratified incentive system that was being implemented with respect to inmates in administrative segregation, if used fairly, was consistent with due process. (Colorado Department of Corrections, Colorado State Penitentiary)

U.S. Appeals Court
PROTECTIVE CUSTODY
RETALIATION

Bistrian v. *Levi*, 696 F.3d 352 (3rd Cir. 2012). A federal inmate brought a civil rights action against prison officials and employees, alleging, among other things, that the defendants failed to protect him from inmate violence, and that the defendants placed him in a special housing unit (SHU) in retaliation for exercising his First Amendment rights. The inmate alleged that prison investigators used him to intercept notes being passed among other inmates, and then failed to protect him after they fouled up the operation and the inmates discovered his involvement. When the target inmates threatened to retaliate, the inmate contended he repeatedly begged the officials responsible for help, but no one took any preventive measures. Later, one of the inmates against whom inmate had cooperated, along with two others, beat him while they were together in a locked recreation pen. A few months later, an inmate wielding a razor-blade type weapon also attacked the inmate in the recreation pen. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the officials' decision to keep the inmate, who had acted as an informant, in SHU after his cooperation with the officials was not unreasonable; (2) the officials were deliberately indifferent to the inmate's safety when they placed him in a recreation yard with prisoners who were aware of his complicity with officials by informing on them; (3) the officials were not deliberately indifferent to a risk of harm when they placed the inmate in the yard with a prisoner who had a history of violent assaults against other inmates; (4) the inmate stated a failure-to-protect claim with respect to the officer's failure to intervene in the assault, where he intervened in another prisoner's assault on the inmate in the special housing unit's (SHU) recreation yard "only after several minutes of continued pummeling;" and (6) the inmate stated a substantive due process claim. The court noted that the federal inmate, who was either not yet convicted, or convicted but not yet sentenced, when he was attacked by other inmates in the prison's recreation yard, had a clearly established due process right to have prison officials protect him from inmate violence. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. Appeals Court
GOOD TIME
RETALIATION

Cardona v. *Bledsoe*, 681 F.3d 533 (3rd Cir. 2012). A federal inmate petitioned for habeas relief arguing that the federal Bureau of Prisons (BOP) illegally referred him to the Special Management Unit (SMU) of a penitentiary in which he was currently placed, as punishment for filing numerous lawsuits against the BOP. The district court dismissed the action. The prisoner appealed. The appeals court affirmed. The court held that the inmate's

petition for habeas relief did not concern the execution of his sentence, and thus the district court did not have subject-matter jurisdiction over it, since the inmate did not allege that the BOP's conduct was somehow inconsistent with the command or recommendation in the sentencing judgment; even if the inmate's placement in SMU made him eligible to lose good time credits, he might not end up losing any. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
MEDICAL TREATMENT
PLACEMENT IN SEGREGATION
REVIEW

Disability Law Center v. *Massachusetts Dept. of Correction*, 960 F.Supp.2d 271 (D.Mass. 2012). A nonprofit organization, which represented mentally ill prisoners, brought an action against a state's Department of Correction, alleging that the Department and its officials violated the federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time. After extensive negotiations, the parties jointly moved for approval of a settlement agreement. The district court granted the motion, finding the agreement to be fair, reasonable, and adequate. The court noted that the agreement addressed the fundamental issue of prison suicides by providing a process for minimizing the possibility that inmates with serious mental illnesses would be confined in segregation, and for reviewing their mental health while in segregation. The court held that the agreement did not order any "prospective relief," or in fact any "relief" at all, thereby precluding the applicability of the requirement of the Prison Litigation Reform Act (PLRA), that prospective relief not extend further than necessary to remedy violation of a federal right. (Massachusetts Department of Correction)

U.S. District Court
CONTAGIOUS DISEASE
MEDICAL CARE
PROGRAMS

Henderson v. *Thomas*, 891 F.Supp.2d 1296 (M.D.Ala. 2012). State prisoners, on behalf of themselves and a class of all current and future HIV-positive (HIV+) prisoners, filed a class action against prison officials, seeking declaratory judgment that the Alabama Department of Corrections' (ADOC) policy of segregating HIV+ prisoners from the general prison population violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and seeking an injunction against further enforcement of the policy. The district court denied the officials' motion to dismiss. The court held that the prisoners' class action complaint plausibly alleged that HIV-positive prisoners suffered from an impairment that substantially limited a major life activity, as required to state claims that the ADOC HIV-segregation policy discriminated against prisoners on the basis of a disability in violation of ADA and the Rehabilitation Act. According to the court, the complaint provided information on the contemporary medical consensus regarding HIV treatment and alleged that each named plaintiff was diagnosed with HIV, that HIV was an impairment of the immune system, that HIV substantially limited the named plaintiffs in one or more major life activities, and that HIV qualified as a disability. The court found that the prisoners' class action complaint plausibly alleged that they were otherwise qualified individuals with a disability due to their HIV-positive status on the grounds that reasonable accommodations could be made to eliminate the significant risk of HIV+ prisoners transmitting HIV while integrated with other prisoners. The complaint alleged details of the programs and accommodations for which HIV+ prisoners were ineligible, alleged that all but two state penal systems had integrated HIV+ prisoners into the general prison population, and alleged that the National Commission on Correctional Health Care counseled against segregation. (Alabama Department of Corrections)

U.S. District Court
DUE PROCESS
ISOLATION

Johnston v. *Maha*, 845 F.Supp.2d 535 (W.D.N.Y. 2012). A pretrial detainee brought a § 1983 action against a county sheriff, employees of a county jail, and others, alleging, among other things, violations of his Eighth Amendment right to be free from cruel and unusual punishment and his Fourteenth Amendment right to due process. The district court granted the defendants' motion for summary judgment, and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded for further proceedings. On remand, the district court held that: (1) a fact issue as to whether a correctional officer assaulted the detainee precluded summary judgment on the detainee's Eighth Amendment claim; (2) summary judgment was precluded by fact issue as to whether the detainee was twice placed in isolation as a form of punishment without being given advance notice or opportunity to be heard; and (3) summary judgment was precluded by a fact issue as to whether the detainee exhausted administrative remedies as to the claim that a correctional officer placed him in an isolation cell without prior notice. (Genesee County Jail, New York)

U.S. Appeals Court
EXERCISE
RECREATION

Norfleet v. *Walker*, 684 F.3d 688 (7th Cir. 2012). An Illinois state prisoner, who was wheelchair-bound due to a "nerve condition," brought an action against several prison employees, alleging that refusing to allow him to engage in physical outdoor recreational activity violated the Americans with Disabilities Act (ADA). The prisoner was housed in segregation, therefore confined to his one-person cell 23 hours a day. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded. The appeals court found that an alleged prison "quorum rule" that will not allow a disabled inmate to engage in outdoor recreation unless at least nine other disabled inmates want to do so as well, seemed arbitrary. The court noted that recreation, including aerobic exercises that cannot be performed in a cell, is particularly important to the health of a person confined to a wheelchair. According to the court, whether seven weeks without such recreation can result in serious harm to someone in the plaintiff's condition is a separate question not yet addressed in the litigation. (Pinckneyville Correctional Center, Illinois)

U.S. District Court
CONTAGIOUS DISEASE
MEDICAL TREATMENT

Parkell v. *Danberg*, 871 F.Supp.2d 341 (D.Del. 2012). A state inmate who developed a staphylococcus infection brought an action against the corporation that contracted with the prison to provide medical services to inmates and the corporation's employees, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs, in violation of Eighth Amendment. The inmate also alleged that the corporation violated his substantive due process rights by refusing to treat him while he was housed in isolation. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The district court held that the inmate stated a § 1983 Eighth Amendment medical needs claim against the employee with his allegations in his complaint that: (1) an employee of the corporation refused to

examine the inmate; (2) the employee ignored the inmate's complaints of an infected arm, and refused to administer a pain reliever; (3) over the next few days his condition worsened and correctional officers notified the on-duty physician regarding the inmate's condition; and (4) the physician performed a medical procedure on the inmate's elbow approximately one week following his visit with the employee. The court found that the inmate stated a § 1983 Eighth Amendment medical needs claim against the corporation with his allegations that the corporation had policies, customs, or practices of refusing to treat the inmate, who developed a staphylococcus infection, particularly when he was housed in isolation. According to the court, the inmate stated a § 1983 substantive due process claim against the corporation with his allegations that he was subjected to conditions significantly worse than other inmates under similar circumstances, and that because of his security classification, the corporation refused to treat him while housed in isolation, and refused to enter his cell to provide treatment while he was housed in the infirmary. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
LENGTH
CONDITIONS

Peoples v. *Fischer*, 898 F.Supp.2d 618 (S.D.N.Y. 2012). A state prisoner who was housed in segregation for over two years brought an action against prison officials, alleging the defendants violated his right to be free from cruel and unusual punishment. After the district court dismissed the prisoner's complaint in part, the defendants moved for reconsideration. The district court granted the motion in part and denied in part. The court held that the prison officials were arguably put on sufficient notice that a sentence of three years of special housing unit (SHU) confinement for a non-violent infraction of prison rules could well be found to be grossly disproportionate and, therefore, in violation of the Eighth Amendment, such that the conduct of the prison officials in sentencing the prisoner to such a sentence could be found to have violated the prisoner's clearly established right to be free from cruel and unusual punishment. The court denied qualified immunity for the prison officials, noting that numerous courts had found that long stretches of segregation could constitute cruel and unusual punishment, and courts had repeatedly determined that the conditions of segregated confinement were unconstitutional if they did not meet certain minimum standards. The court noted that the prisoner was housed in segregation for over two years even though there was never any finding that he posed a threat to the safety of others or the security of the prison. (Upstate Correctional Facility, Green Haven Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST
RESTRICTIONS
REVIEW
TRANSFER

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
DUE PROCESS
HYGIENE
MEDICAL TREATMENT
PSYCHIATRIC CARE
RESTRAINTS

Rice ex rel. Rice v. *Correctional Medical Services*, 675 F.3d 650 (7th Cir. 2012). Following a pretrial detainee's death while incarcerated, his parents, representing his estate filed suit pursuant to § 1983, alleging among other things that jail officials and medical personnel had deprived the pretrial detainee of due process by exhibiting deliberate indifference to his declining mental and physical condition. The district court entered summary judgment against the estate. The estate filed a second suit reasserting the state wrongful death claims that the judge in the first suit had dismissed without prejudice after disposing of the federal claims. The district court dismissed that case on the basis of collateral estoppel, and the estate appealed both judgments. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether jail officials were deliberately indifferent to the pretrial detainee's conditions of confinement, and whether his conditions of confinement were sufficiently serious to support his Fourteenth Amendment due process claim. The court noted that whether the detainee himself created the unsanitary conditions was a fact relevant to the claim, but given detainee's mental condition, it did not foreclose the claim. The court found that the estate failed to show that the detainee's assignment to an administrative segregation unit of the jail for approximately seven months violated the detainee's due process rights, where the estate failed to identify feasible alternatives and to tender evidence supporting the contention that the detainee likely would have fared better in one of those alternative placements.

The court held that jail officials did not employ excessive force, in violation of due process, to the pretrial detainee who had been fighting with his cellmate and failed to comply with a directive that he step out of his cell which he refused to leave for 18 hours, by spraying his face with pepper foam, and placing him in a restraint chair. The court held that jail officials did not have notice of a substantial risk that the mentally ill pretrial detainee might be assaulted by other inmates, as required to support the pretrial detainee's claim of deliberate indifference in violation of due process. The court noted that while jail personnel were aware that the detainee had a hygiene problem, they had no notice that he was at risk of assault because of that problem, particularly within the more secure confines of the administrative segregation unit. The court found that neither jail guards or supervisors were deliberately indifferent to the risk that the mentally ill pretrial detainee might engage in a behavior such as compulsive water drinking that would cause him to die within a matter of hours

and did not consciously disregarded that risk, and therefore they were not liable for his death under § 1983. According to the court, while a factfinder might conclude that the guards exhibited a generalized recklessness with respect to the safety of the inmates housed in the administrative segregation unit by failing to conduct hourly checks of the unit, there was no evidence that the guards or supervisors were subjectively aware of the possibility that the detainee might injure himself to the point of death before anyone could intervene. (Elkhart County Jail, Indiana)

U.S. District Court
PLACEMENT IN 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)

2013

U.S. District Court
PRETRIAL DETAINEE DUE PROCESS
PLACEMENT IN SEGREGATION
RESTRAINTS

Allah v. *Milling*, 982 F.Supp.2d 172 (D.Conn. 2013). A pretrial detainee brought an action against prison officials, asserting claims for violation of the Eighth Amendment and his due process rights under the Fourteenth Amendment based on his placement in an administrative segregation program. The officials moved for summary judgment on the due process claims. The district court denied the motion, finding that summary judgment was precluded by several fact issues. The court held that a genuine issue of material fact existed as to whether the decision by prison officials to place the pretrial detainee, who had previously been in an administrative segregation program before being discharged from the correctional facility, in administrative segregation immediately upon his readmission for a subsequent offense, was for a punitive purpose or was based on a legitimate non-punitive purpose. The court found that a fact issue existed as to whether the restrictions imposed upon the detainee during his confinement in administrative segregation, including handcuffs and leg shackles, constituted punishment. (Garner Correctional Institution, Connecticut)

U.S. District Court
PROTECTIVE CUSTODY

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. Appeals Court
DUE PROCESS
LIBERTY INTEREST
CONDITIONS
EXERCISE
PRIVILEGES
RECREATION

Hardaway v. *Meyerhoff*, 734 F.3d 740 (7th Cir. 2013). A state prisoner who had spent six months in segregation as punishment for a disciplinary misconduct charge which was later expunged, filed a § 1983 action, alleging that the segregation violated his due process rights. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's placement in disciplinary segregation in a cell with a solid metal door and a confrontational cell mate for 182 days, with only weekly access to the shower and the recreation yard, did not amount to atypical and significant hardships, as required to establish a deprivation of the prisoner's due process liberty interests, where the prisoner was not deprived of all human contact or sensory stimuli. The court found that the state prison officials were entitled to qualified immunity for their conduct in placing the prisoner in disciplinary segregation, as the disciplinary segregation did not violate any clearly established right. (Menard Correctional Center, Illinois)

U.S. District Court
JUVENILE
MEDICAL TREATMENT
PROTECTIVE CUSTODY
PSYCHIATRIC CARE

Harrelson v. *Dupnik*, 970 F.Supp.2d 953 (D.Ariz. 2013). The mother of 17-year-old inmate who died while housed at a county jail brought an action in state court against the county, the county sheriff, the healthcare provider which contracted with the county to provide medical and mental health care at the jail, and employees of the provider, individually and on behalf of the inmate's estate, alleging under § 1983 that the defendants were deliberately indifferent to the inmate's serious medical needs. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that: (1) the county defendants' duty to provide medical and mental health services to an inmate was non-delegable; (2) intervening acts of the medical defendants did not absolve the county defendants of liability for alleged negligence; (3) the mother failed to state a claim for wrongful death; (4) the county was not deliberately indifferent to the inmate's rights; (5) the provider was not subject to liability; but (6) a fact issue

precluded summary judgment as to an Eighth Amendment medical claim against the employees. According to the court, the duty of the county and the county sheriff to provide medical and mental health services to the 17-year-old county jail inmate, who suffered from bipolar disorder and depression, was non-delegable, and thus the county and sheriff were subject to vicarious liability, under Arizona law, for the alleged medical malpractice of the healthcare provider which contracted with the county to provide medical and mental health services at the jail. The court noted that there was no evidence that the legislature intended to permit the county or sheriff to delegate their duties and obligations they owned to the inmate.

The court found that the intervening acts of the contract medical provider, in allegedly failing to properly diagnose and treat the inmate's medical and mental health needs, both before and after the inmate received an injection of a psychotropic medication, were not so extraordinary as to absolve the county and the county sheriff of liability for their failure to protect the inmate.

The court found that there was no evidence that the county jail's policy or custom of placing inmates in protective custody for their own protection amounted to deliberate indifference to the constitutional rights of the inmate, who died while on protective custody status. According to the court, there was no evidence that the county had actual notice of a pattern of risk of harm or injury as a result of the county jail officials' use of isolation, or an administrative segregation policy in the juvenile detention housing unit at the county jail, or that any omissions in the county's policies necessarily gave rise to the situation in which the inmate, died from a purported cardiac event.

The court found that summary judgment was precluded by genuine issues of material fact as to whether the inmate's prescribing physician knew of the inmate's serious medical need for a full psychiatric assessment, and failed to timely provide that assessment, and as to whether jail medical personnel were aware that the inmate was suffering from a reaction to a psychotropic medication or unknown serious medical illness, and, if so, whether they were deliberately indifferent. (Pima County Adult Detention Complex, and Conmed Healthcare Management, Inc., Arizona)

U.S. District Court
DUE PROCESS
HEARING
PLACEMENT IN SEGREGATION
REVIEW
TRANSFER

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
PLACEMENT IN SEGREGATION
RETALIATION

Pena v. *Greffet*, 922 F.Supp.2d 1187 (D.N.M. 2013). A female former state inmate brought a § 1983 action against a private operator of a state prison, the warden, and corrections officers, alleging violation of her civil rights arising under the Fourth, Eighth, and Fourteenth Amendments, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate's complaint stated claims against the operator and the warden for violations of the Eighth and Fourteenth Amendment, and for First Amendment retaliation. The inmate alleged that the operator and the warden engaged in practices of placing inmates who reported sexual abuse in segregation or otherwise retaliating against them, violating its written policies by failing to report allegations of prison rape to outside law enforcement, failing to conduct adequate internal investigations regarding rape allegations, and offering financial incentives to prison employees for non-reporting of rape allegations. The inmate alleged that the operator and the warden placed her in segregation for eight months because she reported a corrections officer's rape and another officer's assault, that the operator and warden were aware of her complaints, and that her placement in segregation was in close temporal proximity to the complaints. (N.M. Women's Corr'l. Facility, Corrections Corporation of America)

U.S. District Court
PLACEMENT IN SEGREGATION
CONDITIONS
DUE PROCESS

Potts v. *Moreci*, 12 F.Supp.3d 1065 (N.D.Ill. 2013). A pretrial detainee brought a § 1983 action against a county, employees of the county jail in their individual capacities, and a sheriff, in his individual and official capacities, alleging retaliation in violation of his First Amendment rights, deprivation of his procedural due process and equal protection rights, denial of access to the courts, municipal liability, and statutory indemnification. The sheriff moved to dismiss the claims asserted against him. The district court granted the motion in part and denied in part. The court found that the detainee who allegedly was placed in a segregation unit at the county jail without adequate grounds and without an opportunity to contest such placement stated a claim for a procedural due process violation against the sheriff, in his individual capacity, under § 1983. The court noted that the sheriff's personal responsibility for the detainee's placement in segregation could be assumed in determining whether the detainee adequately pleaded the claim, and the detainee also sufficiently alleged the sheriff's knowledge of the detainee's allegedly unconstitutional confinement in segregation by asserting that the sheriff attended periodic meetings at which the detainee's confinement was discussed, which permitted the inference that sheriff knew about the challenged conduct and facilitated, approved, condoned, or turned a blind eye to it. The court held that the detainee sufficiently pleaded the sheriff's personal involvement in the alleged misconduct of jail employees in singling out the detainee for arbitrary treatment during his

confinement in a segregation unit, subjecting him to living conditions that were inconsistent even with conditions of other detainees in a segregation unit, and thus stated a § 1983 claim for class-of-one equal protection violation against the sheriff. (Cook County Jail, Illinois)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
HEARING
PLACEMENT IN SEGREGATION
RESTRICTIONS
SEARCHES
TELEPHONE
VISITS

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
LIBERTY INTEREST
DUE PROCESS
EVIDENCE
REVIEW

Selby v. *Caruso*, 734 F.3d 554 (6th Cir. 2013). A prisoner brought a civil rights action against a state prison and its personnel, alleging violation of his due process rights. The district court granted summary judgment for the defendants. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the prisoner's confinement in administrative segregation for 13 years was sufficiently atypical as to give rise to a protected due process liberty interest; (2) a factual issue existed as to whether the prisoner received meaningful periodic reviews and whether state prison officials' decision to continue the prisoner's confinement in administrative segregation for nearly 13 years was supported by "some evidence"; (3) the defendant state prison and prison personnel could not be granted qualified immunity at the summary judgment stage on the prisoner's civil rights claim alleging violation of his due process rights; and (4) the prisoner's First Amendment religious freedom claim was deemed abandoned. The court noted that a reasonable prison official should have known that the prisoner could not be confined in administrative segregation for pretextual reasons. (Marquette Branch Prison, Michigan Department of Corrections.)

U.S. District Court
MEDICAL TREATMENT
PSYCHIATRIC CARE
REVIEW
DUE PROCESS

Slevin v. *Board of Com'rs for County of Dona Ana*, 934 F.Supp.2d 1270 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. The detainee alleged that, because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in violation of the Americans with Disabilities Act. The jury awarded the detainee $3 million in punitive damages against the Detention Center Director, and $3.5 million in punitive damages against the facility medical director. The jury fixed the amount of compensatory damages at $15.5 million, which included $500,000 for each month that detainee was incarcerated, plus an additional $1 million for each year since the detainee's release from custody. The defendants moved for a new trial or for reduction of the damages awards. The district court denied the motion, finding that the compensatory damages award was supported by substantial evidence and it would not be set aside on the ground that it was the product of passion or prejudices. The court also declined to set aside the punitive damages awards as excessive. (Doña Ana County Detention Center, New Mexico)

U.S. District Court
EQUAL PROTECTION
LAW LIBRARY
LIBERTY INTEREST
PLACEMENT

Tavares v. *Amato*, 954 F.Supp.2d 79 (N.D.N.Y.2013). An inmate who had recently been released from the custody of a county jail filed a pro se suit against a sheriff and jail administrator, claiming his First Amendment rights were violated by his inability to access a law library and to engage in religious worship while confined in involuntary protective custody (IPC). The inmate also alleged that he was discriminated against and placed in IPC because he was a sex offender, in contravention of the Equal Protection Clause, and that his conditions of confinement violated the Eighth Amendment. Both sides moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that: (1) there was no evidence of injury, as required to support a claim for violation of the First Amendment's right

of access to the courts; (2) there was no evidence that the inmate had firmly held religious beliefs, as required to support a claim for violation of his First Amendment's right to free exercise of religion; (3) confinement of the inmate in administrative segregation for 132 days was not cruel or unusual punishment, in violation of the Eighth Amendment; and (4) the inmate's initial five-day segregation, for purposes of a determining a housing classification, was insufficient to establish a liberty interest.

But the court held that summary judgment was precluded by genuine issues of material fact: (1) as to whether the county jail had a rational basis for housing inmates with sex offender criminal histories in administrative segregation, rather than with the general prison population; (2) whether there was a violation of the Equal Protection Clause; and (3) on the officials' claim for qualified immunity.

According to the court, there was no evidence that the inmate suffered any type of actual injury as a result of receiving only one trip to the facility's law library during his 132-day confinement in involuntary protective custody (IPC). The court found that the inmate's claims, even if proven, that jail officials confined him in administrative segregation for 132 days, for 23 hours each day, only allowing him to shower during his one hour long recreation period, prohibiting him from wandering around outside of his cell, and forcing him to pick and choose which amenities he wanted to avail himself to given his limited amount of time outside of his cell, did not amount to cruel or unusual punishment in violation of the Eighth Amendment, since the officials' actions involved no specific deprivation of any human need. (Montgomery County Jail, New York)

U.S. District Court
CONDITIONS
DUE PROCESS
EQUAL PROTECTION
SEARCHES

Turkmen v. *Ashcroft*, 915 F.Supp.2d 314 (E.D.N.Y. 2013). Arab and Muslim alien detainees who were held on immigration violations in the wake of 9/11 terrorist attacks brought a putative class action against the government and various government officials, alleging that they were physically and verbally abused, subjected to arbitrary strip searches, and subjected to prolonged detention. The defendants moved to dismiss for failure to state claim. The district court granted the motions in part and denied in part. The court held that: (1) Department of Justice (DOJ) officials were not liable for the alleged substantive due process violations; (2) the detainees stated a substantive due process claim against federal detention center officials; (3) detention center officials were not entitled to qualified immunity from the substantive due process claim; (4) the detainees failed to state an equal protection claim against the DOJ officials; (5) the detainees stated an equal protection claim against detention center officials; (6) as an issue of first impression, the officials were entitled to qualified immunity from claims arising from a communications blackout; and (7) as an issue of first impression, a damages remedy under Bivens would be implied to remedy the alleged deprivation of detainees' free exercise rights.

According to the court, the DOJ officials' failure to make explicit the expectation that its harsh confinement policy, which was a directive to hold Arab and Muslim pretrial detainees in restrictive conditions under which they would feel maximum pressure to cooperate with the investigation of the 9/11 terrorist attacks, should be carried out lawfully, did not suggest punitive intent, as would subject the officials to liability under Bivens, where they were entitled to expect that their subordinates would implement their directions lawfully. The detainees alleged that the warden ordered the creation of an administrative maximum special housing unit (ADMAX SHU) and ordered two of his subordinates to design extremely restrictive conditions of confinement for those assigned to it, that the warden was made aware of the abuse that occurred through inmate complaints, staff complaints, hunger strikes, and suicide attempts, and that other officials made rounds in ADMAX SHU and were aware of the abusive conditions there. The court found that these allegations stated substantive due process claims against the detention facility officials in a Bivens action. The court found that the detention facility officials were not entitled to qualified immunity from the Bivens substantive due process claims. (Metropolitan Detention Center, New York, and Passaic County Jail, New Jersey)

U.S. District Court
EVIDENCE
PLACEMENT
RELIGIOUS SERVICES
RETALIATION

Uduko v. *Cozzens*, 975 F.Supp.2d 750 (E.D.Mich. 2013). A prisoner bought claims under *Bivens*, the Religious Freedom Restoration Act of 1993 (RFRA), the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and conspiracy, against corrections officers, alleging that the officers had retaliated and discriminated against him for lodging complaints and filing various grievances, by restricting his participation as a religious inmate representative and in religious activities. The officers moved to dismiss. The district court granted the motions in part and denied in part. The court held that the prisoner alleged a substantial burden on his ability to perform religious acts of significance to his faith. The court found that claims that a corrections officer failed to give the prisoner an administrative detention order that explained why the prisoner was placed in administrative detention and why the prisoner was cleared of all allegations against him after he was removed, along with claims that the officers recruited inmates to supply false allegations against the prisoner, plausibly alleged a conspiracy sufficient to survive a motion to dismiss the prisoner's *Bivens* conspiracy claim against the officers. The court held that claims that corrections officers restricted the prisoner's active participation in religious services, banned him from attending and participating in any and all religious services and programs held in the chapel area, and prohibited him from prophesying and laying hands on and praying for anyone, alleged a substantial burden on prisoner's ability to perform religious acts of significance to his faith, as required to support prisoner's First Amendment retaliation claims, and claimed violations of RFRA and RLUIPA. (Federal Correctional Institution in Milan, Michigan)

2014

U.S. District Court
CONDITIONS
CIVIL COMMITMENT
RELIGIOUS SERVICES

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 Corr'l. Institution at Butner, North Carolina)

U.S. District Court
CONDITIONS
LENGTH
MEDICAL CARE

Coleman v. *Brown*, 28 F.Supp.3d 1068 (E.D.Cal. 2014). Nearly 20 years after mentally ill inmates prevailed on class action challenges to conditions of their confinement and a special master was appointed to implement a remedial plan, the inmates moved to enforce court orders and for affirmative relief related to the use of force, disciplinary measures, and housing and treatment in administrative segregation units (ASUs) and segregated housing units (SHUs). The district court granted the motions in part. The court held that prison officials' excessive use of force on seriously mentally ill inmates by means of pepper spray and expandable batons, pursuant to prison policies and without regard to the impact on inmates' psychiatric condition, was not yet remedied, as required by the prior judgment in favor of inmates. The court found that prison officials' changes in policies and practices of housing mentally ill inmates in administrative segregation units (ASUs) and segregated housing units (SHUs) were inadequate to remedy the systemic Eighth Amendment violations identified in the prior judgment in favor of inmates. According to the court, the placement of seriously mentally ill inmates in the harsh, restrictive, and non-therapeutic conditions of administrative segregation units (ASUs) for non-disciplinary reasons for more than the minimal period necessary to transfer the inmates to protective housing or a housing assignment violated the Eighth Amendment. The court noted that nearly half of the suicides in ASUs were by inmates placed there for non-disciplinary reasons, and such placement subjected inmates to significant restrictions including no contact visits, significant limits on access to both exercise yards and dayroom, eating all meals in their cells, being placed in handcuffs and restraints when moved outside their cells, and receiving mental health treatment in confined spaces described as "cages," with strip searches before and after treatment. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
CONDITIONS

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. District Court
PLACEMENT
LENGTH
CONDITIONS
LAW LIBRARY
PRIVILEGES
TELEPHONE
MEDICAL TREATMENT
LIBERTY INTEREST

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
CONDITIONS
ASSIGNMENT
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
MEDICAL TREATMENT
REGULATIONS

Palmer v. *Flore*, 3 F.Supp.3d 632 (E.D.Mich. 2014). A prisoner brought an action against prison officials, alleging that they were deliberately indifferent to his medical needs. The defendants asserted an affirmative defense that the prisoner failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). The district dismissed the defendants' defense with prejudice, finding that the prisoner's timely submission of a Step-I grievance pursuant to the Michigan Department of Corrections' (MDOC) three-step grievance process was sufficient to comply with the PLRA exhaustion requirement, even though the prisoner received no response from prison officials. The court noted that the prisoner completed the required form an slid it through the crack in his cell door, which was apparently a common practice that prisoners in administrative segregation used for submitting grievances. (St. Louis Correctional Facility, Michigan)

U.S. District Court
HANDICAP

Stoudemire v. *Michigan Dept. of Corrections*, 22 F.Supp.3d 715 (E.D.Mich. 2014). A female former prisoner, who was a double amputee, brought an action against the Michigan Department of Corrections (MDOC) and various MDOC-associated officers and healthcare professionals, asserting violations of § 1983, the Americans with Disabilities Act (ADA), and state law. The prisoner alleged failure to provide adequate health care and accommodations for disabled individuals. The district court denied summary judgment to the warden and a corrections officer on their qualified immunity defenses to the § 1983 claims. The defendants appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand the district court held that: (1) a fact question as to whether the warden was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed precluded summary judgment, and (2) it was clearly established that deliberate indifference to serious medical needs of prisoners constituted the unnecessary and wanton infliction of pain proscribed by Eighth Amendment. The prisoner alleged that she acquired MRSA following the amputation of her left leg. As a result of her condition, her housing assignment at the facility was changed from the infirmary to the segregation unit. The prisoner alleged that there was an absence of handicap facilities within this unit, that she was unable to safely transfer from her wheelchair to the bed or toilet, and that she was allowed only one shower during the two weeks while housed in segregation. (Huron Valley Women's Correctional Facility, Michigan)

2015

U.S. District Court
HANDICAP
PLACEMENT IN
SEGREGATION

Armstrong v. *Brown*, 103 F.Supp.3d 1070 (N.D. Ca. 2015). Disabled state prisoners filed a motion for further enforcement of an injunction applicable to all California Department of Corrections and Rehabilitation (CDCR) prisons, alleging that corrections officials were continuing to place class members in administrative segregation due to a lack of accessible housing, in violation of the district court's orders and the Americans with Disabilities Act (ADA). The district court granted the motion, holding that further enforcement would not be limited to the least compliant correctional institutions. The court noted that while the majority of the violations took place at one institution, the violations occurred at other institutions as well, and that transfers of disabled prisoners into non-complying institutions occurred with the involvement of CDCR officials. (California Department of Corrections and Rehabilitation)

U.S. District Court
CONDITIONS

Grenning v. *Stout*, 144 F.Supp.3d 1241 (E.D. Wash. 2015). A state prisoner commenced s § 1983 action against prison officials, claiming that exposing him to constant lighting for 13 days in segregation management unit (SMU) violated the Eighth Amendment's bar against cruel and unusual punishment. The district court granted summary judgment to the officials and the prisoner appealed. The appeals court reversed and remanded. The district denied summary judgment, in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the state prisoner suffered harm resulting from his exposure to continuous light for 13 days; (2) whether state prison officials acted with deliberate indifference in exposing the prisoner to continuous light for 13 days; (3) whether the prisoner had suffered an immediate injury from being exposed to continuous light in the prison's segregation management unit; (4) whether legal damages would be inadequate to compensate the prisoner for his alleged suffering or to restore his health, as to the costs of changing the lighting; and (5) whether penological purposes would be undermined if the lighting was changed. The court noted that the prisoner had offered evidence of the harm he already had suffered due to the lighting conditions, including testimony of a board certified sleep medicine expert. (Airway Heights Corrections Center, Washington)

U.S. Appeals Court
LENGTH
CONDITIONS
REVIEW

Incumaa v. *Stirling*, 791 F.3d 517 (4th Cir. 2015). An inmate brought a § 1983 action against the acting director of a state department of corrections, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and Fourteenth Amendment procedural due process in his placement in solitary confinement for 20 year following his participation in a riot. The inmate was a member of the Nation of Gods and Earths ("NOGE"), also known as the "Five Percenters." Prison policy required the inmate to renounce his affiliation with NOGE as a condition of being released from segregation. The inmate asserted that NOGE was a religion and that he was being asked to renounce his religion in order to be released from solitary confinement, in violation of RLUIPA. The district court granted the director's motion for summary judgment and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prison policy did not force the inmate to choose between continued adherence to his religion or release from solitary confinement.

But the court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison's review process for inmates in solitary confinement was adequate. The court noted that the inmate was subject to near-daily cavity and strip searches, he was confined to a small cell for all sleeping and waking hours, aside from 10 hours of activity outside the cell per month, he was denied educational, vocational, and therapy programs, the inmate was socially isolated, and confinement was indefinite. (South Carolina Department of Corrections)

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
PROGRAMS
GOOD TIME

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
PROTECTIVE CUSTODY

Pierce v. *District of Columbia*, 128 F.Supp.3d 250 (D.D.C. 2015). A deaf inmate who communicated with American Sign Language (ASL), but who had been forced to communicate with staff and other inmates only through lip-reading and written notes due to the lack of an interpreter to assist him, filed suit against the District of Columbia alleging discrimination and retaliation in violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Both sides moved for summary judgment. The district court granted the inmate's motion in part and denied the defendant's motion. The court held that: (1) the prison had affirmative duty to evaluate the newly incarcerated deaf inmate's accommodation requirements, and its failure to do so denied the inmate benefits under the Rehabilitation Act and ADA; (2) the prison was deliberately indifferent to the deaf inmate's need for accommodation, as would support an award of compensatory damages; and (3) summary judgment was precluded by a genuine issue of material fact as to whether the prison had placed the inmate in protective custody, and kept him there, because of the inmate's constant requests for accommodation. The court noted that the inmate's need for accommodation was obvious, in that the inmate did not speak and communicated only through American Sign Language (ASL), and the prison was required to identify precise limitations resulting from the disability and potential reasonable accommodations by way of an interactive assessment of the inmate. According to the court, the inmate's request for an American Sign Language (ASL) interpreter to assist him during anger management and substance abuse classes was sufficient to put the prison on notice that deaf inmate might need a similar accommodation to communicate effectively in other prison situations, such as in inmate programs, hall meetings, the orientation process, protective custody proceedings, graphic arts class, and medical consultations. (Correctional Treatment Facility, District of Columbia)

U.S. District Court
CONDITIONS
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
PLACEMENT
TRANSFER

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)

U.S. District Court
ISOLATION
RESTRICTIONS
REVIEW

Szubielski v. *Pierce*, 152 F.Supp.3d 227 (D. Del. 2016). A state prisoner, acting pro se and in forma pauperis (IFP), brought a § 1983 action against prison officials, relating to his continuing classification for solitary confinement. At the screening stage of the case, the district court held that the prisoner stated a First Amendment retaliation claim against a prison warden and an Eighth Amendment claim regarding conditions of confinement. The prisoner complained of 24-hour cell confinement, limited recreation, extreme social isolation, environmental deprivation, limited telephone calls, and limited visits. The prisoner suffered from schizophrenia, severe manic depression, and an anxiety disorder. The court found that the prisoner's allegations that the prison warden retaliated against him after a civil rights advocacy organization filed a lawsuit challenging solitary confinement of prisoners, by keeping the prisoner in solitary confinement despite a classification committee's reclassification of the prisoner for medium-security housing, stated a First Amendment retaliation claim. According to the court, the prisoner's allegations that his continued solitary confinement, which had already lasted nine years, involved extreme social isolation, inadequate medical care, limited recreation, and environmental deprivation, stated a claim the under the Eighth Amendment regarding conditions of confinement. (James T. Vaughn Correctional Center, Delaware)

SECTION 4: ASSESSMENT OF COSTS

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. Appeals Court
DAMAGES

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

1972

U.S. Supreme Court
RECOUPMENT

James v. Strange, 407 U.S. 128 (1972). A Kansas recoupment statute enabling a state to recover in subsequent civil proceedings legal defense fees for indigent defendants, which was invalidated by the federal district court as an infringement on the right to counsel, was also **held** by the United States Supreme Court to violate the equal protection clause in that, by virtue of the statute, indigent defendants are deprived of the array of protective exemptions Kansas had erected for other civil judgment debtors. 323 F.Supp. 1230, affirmed. (Kansas)

1974

U.S. Supreme Court
RECOUPMENT

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.

(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. 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.

1975

U.S. District Court
DEFENSE

Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), aff'd, 563 F.2d 741 (5th Cir. 1977). Financial difficulties do not provide a defense where conditions of confinement violate minimum constitutional standards. (Duval County Jail, Florida)

U.S. District Court
REMEDIES

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)

1980

U.S. District Court
DAMAGES

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

1981

U.S. District Court
DAMAGES

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

1982

U.S. District Court
FINES

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

U.S. District Court
FINES

Mobile Co. Jail Inmates v. Purvis, 551 F.Supp. 92 (S.D. Ala. 1982), aff'd, 703 F.2d 580 (11th Cir. 1973). Defendants are found in contempt for failing to reduce population. The court found the defendants in contempt for failing to comply with the requirements of a court order by reducing the population of the Mobile County Jail and established a daily fine of $5,000 for each day the defendants are out of compliance with the order. (Mobile County Jail, Alabama)

1983

U.S. Supreme Court
MEDICAL COSTS

City of Revere v. Massachusetts General Hospital, 103 S.Ct. 2979 (1983). Supreme Court ruled that a city is not automatically liable for medical bills of a suspect. The court held that responsibility for medical expenses of persons injured while being apprehended is a matter for state, not federal, law to determine.

U.S. District Court
ATTORNEY FEES

Stanwood v. Green, 559 F.Supp. 196 (1983), aff'd, 774 F.2d 714. Attorney fee award is not lowered because of financial hardship on county. The federal district court for the State of Oregon has held that, even though an inmate's attorneys are not entitled to retroactive fees, financial difficulties faced by the defendant county cannot be considered for the purpose of reducing an award of attorney's fees.

Section 1988 was enacted in October of 1976 and authorized attorney's fees to the prevailing party in all civil rights actions pending under Section 1983 at that time. The Oregon federal court, however, held that this case was not pending on the date of enactment because a consent decree had been signed and filed several months before Section 1988 became effective, and no new action was taken in the case until over four years later.

Refusing to grant fees retroactively, the court did determine that a reasonable attorney's fee in this matter for the work done on the order to show cause and subsequent negotiations was the sum of $134,444, along with $6,861 in expenses. The county defendants cited severe financial hardship and asked that the award be reduced.

In response to this request the court noted that the Supreme Court has upheld attorney's fees awards even in cases where the plaintiff is financially incapable of paying the fees himself. If the financial condition of the plaintiff is irrelevant, then so too must the financial condition of the defendant. The court did agree to enter judgment for one half of the attorney's fees in one year and one half the following year to lessen the impact of the large award. (Coos County Jail, Oregon)

1984

State Appeals Court
MEDICAL COSTS

Cuyahoga County Hospital v. City of Cleveland, 472 N.E.2d 757 (Ohio App. 1984). Ohio appeals court rules that agency who controls prisoner is liable for medical costs. On appeal, the City of Cleveland was ordered to pay $13,045 for medical care provided to prisoners who were detained by the city. The city had argued earlier that the liability for costs was determined by the offense (state or municipal). The appeals court stated that: "...the responsibility for the care and sustenance of a prisoner falls upon the one who exerts actual, physical dominion and control over the prisoner. When physical control is transferred, the responsibility is transferred along with it and the cost of care can be properly prorated. The care the prisoner receives is not incident to the crime but to the custody. (City Jail, Cleveland, Ohio)

State Appeals Court
MEDICAL COSTS

Health and Hosp. Corp. v. Marion County, 470 N.E.2d 1348 (Ind. App. 2 Dist. 1984). A municipal hospital corporation brought declaratory judgment action against the sheriff, seeking a pronouncement of responsibilities of the parties as to payment for care given to prisoners of the sheriff by the hospital. The superior court entered the summary judgment holding that the hospital corporation had a duty to pay for hospital care for the prisoners, and the hospital corporation appealed. The court of appeals held that: (1) the hospital corporation had standing to bring declaratory judgment action; (2) the trial court erred in concluding as a matter of law that the hospital corporation had a duty and responsibility to provide nonreimbursed medical services and hospital care to inmates of the county jail treated at its hospital; and (3) as between hospital corporation and the sheriff, obligation of payment for services rendered to county jail inmates at hospital rested upon the sheriff.

The municipal hospital corporation had a substantial interest in the relief it sought, for purposes of determining whether the hospital corporation had a standing to sue, where uncompensated medical services to prisoners exceeded more than $1 million a year. The municipal hospital corporation had no explicit duty to provide uncompensated treatment to the sheriff's prisoners, where the Health and Hospital Act did not explicitly provide for such treatment. No implied duty to provide nonreimbursed care to the county jail inmates was inherited or assumed by the municipal hospital corporation at the time of its creation, where such a duty did not exist at the time the Health and Hospital Act, which created and organized the hospital corporation, was enacted. (Marion County Jail, Indiana)

State Supreme Court
MEDICAL COSTS

Smith v. Linn County, 342 N.W.2d 861 (Iowa 1984). County must provide for medical treatment, not pay for it. The Supreme Court of Iowa has ruled that a county is only responsible for making medical treatment available to prisoners, and must not always pay for it. The plaintiff involved was in a fight at a bar, was arrested, and was transported to a local hospital for treatment of a broken jaw. Two weeks later, after incurring over $3,000 in medical bills, he was released from the hospital. He sued the county seeking reimbursement of the hospital bill. A lower court ordered the county to pay.

In its decision, the Iowa Supreme Court described reasons for denying free medical attention to prisoners: "Prisoners who could afford to pay the costs of their medical and hospital care would often receive a windfall-- free medical care resulting from their own wrongful acts which necessitated incarceration. Insurers of prisoners might reap the same windfall. If the county were always required to indemnify the prisoner for the cost of medical care, county officials might become hesitant to provide adequate care in borderline cases." (Linn County Jail, Iowa)

State Appeals Court
MEDICAL COSTS

University Emergency Serv. v. City of Detroit, 367 N.W.2d 344 (Mich. App. 1984). Michigan Appeals court determines county responsible for medical costs of prisoners housed by city. Although prisoners were in the custody of the city police, the appeals court held that the county was liable for their medical costs under Michigan law, because the prisoners were being held for violation of state laws. Under a contract, the city agreed to pay for the medical care of prisoners charged with violating city laws. (Wayne County, Detroit, Michigan)

1985

State Appeals Court
MEDICAL COSTS

Craven County Hosp. Corp. v. Lenoir County, 331 S.E.2d 690 (N.C. App. 1985). A hospital tried to collect medical costs from a sheriff, the county, or the city for treating a man who died in the hospital, after city police had him transported there. Police found him intoxicated and were making arrangements to place him in the jail

until he was sober, when he fell and injured his head, requiring immediate medical treatment. The court refused to hold the city liable, because it had not contracted with the hospital to pay the medical costs, nor did it have a statutory duty to pay medical services for people in its custody. The court said it was up to the legislature, not it, to create such a duty. Whether the man was considered to be in the "custody" of police was not relevant to finding an absence of liability. However, the court determined that the man had not been arrested but was merely being **assisted** by the officers, who were authorized to take to the county jail people found drunk in public. (Kingston Police Department, North Carolina)

State Appeals Court
RECOUPMENT

Flowers v. Smith, 496 N.Y.S.2d 149 (A.D. 4 Dept. 1985). A New York appellate court reversed a lower court and held that compelling inmates to reimburse the state for postage costs that exceed their limited free amount is constitutionally permissible. A department directive which provides free postage for five letters per week requires inmates to pay postage for letters in excess of that amount. The money is deducted from their inmate accounts, and there is no provision for recoupment after the inmate is released from prison. (Attica Correctional Facility, New York)

State Supreme Court
MEDICAL COSTS

Harrison Memorial Hospital v. Kitsap County, 700 P.2d 732 (Wash. Sup. Ct. 1985). County required to pay hospital costs associated with prisoner suicide. Kitsap County had contended that the hospital could pay medical expenses associated with a prisoner's suicide with Hill-Burton funds (established by federal government). The court found that, since the county had an obligation to pay for the costs under Washington statutes, Hill-Burton funds could not be used, as "other means of payment were available." (Kitsap County Jail, Washington)

U.S. Appeals Court
ATTORNEY FEES
DAMAGES

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

U.S. Supreme Court
TRANSPORTATION

Pennsylvania Bur. of Correction v. U.S. Marshals, 106 S.Ct 355 (1985). U.S. Marshals cannot be ordered by federal court to transport state inmates to federal courts.

A federal district court had directed state officials to bring five prisoners to the county jail nearest to the court house and had ordered the United States Marshals to bring the prisoners from that jail to the court house to testify in a prisoner's civil rights action against county officials. The Marshals Service appealed the district court order, which was reversed in part by the U.S. Court of Appeals for the Third Circuit. On appeal, the U.S. Supreme Court held that: (1) although statutes require U.S. marshals to obey mandates of federal courts and to transport prisoners if so ordered, the authority to issue the writ must derive from an independent statutory source;
(2) statutes do not authorize writ of habeas corpus ad testificandum to be directed to anyone other than the prisoner's custodian; and (3) the All Writs Act does not authorize courts to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate. (Pennsylvania Bureau of Corrections)

U.S. Appeals Court
MEDICAL COSTS

Shapley v. Nevada Board of State Prison Commissioners, 766 F.2d 404 (9th Cir. 1985). Appeals court upholds three dollar fee for medical visits. A prisoner incarcerated at the Northern Nevada Correctional Center alleged that a state practice of charging prisoners three dollars for each medical visit violated his rights. The Ninth Circuit Court of Appeals held that the prisoner failed to show how the fee had affected his access to medical care and upheld the lower court decision for the defendants. (Northern Nevada Correctional Center)

U.S. District Court
COST OF
CONFINEMENT

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)

State Supreme Court
COST OF CONFINEMENT

Utah County v. Orem City, 699 P.2d 707 (Utah Sup. Ct. 1985). Cities required to pay county for housing prisoners convicted of violating city ordinances. The Utah Supreme Court has ordered several cities to pay a county for the costs of booking, housing, feeding and confining prisoners who had been convicted of violating city ordinances. The court held that since there was no written agreement to the contrary, the cities were responsible under Utah law to reimburse the county for these expenses, which had not been paid since 1977. (Utah County, Orem City, Utah)

1986

U.S. Appeals Court

Akbar v. Fairman, 788 F.2d 1273 (7th Cir. 1986). Prison inmates brought a civil rights action challenging the constitutionality of procedures used in disciplinary proceedings. The United States District Court rendered judgment against the prison officials. The court of appeals, 717 F.2d 1105, affirmed in part, reversed in part and remanded. Certiorari was denied. On remand, the district court denied compensatory damages and assessed costs against the prison officials in connection with the bid for certiorari, and appeal and cross appeal were taken. The court of appeals held that: (1) Although there were due process violations, the officials were justified in taking disciplinary action, precluding the award of compensatory damages; and (2) It was in error to award attorney fees in connection with an unsuccessful petition for certiorari.

The court concluded that the prison disciplinary hearing was justified where the prison officials discovered pieces of paper that appeared to be gang materials and two "kites" in the prisoner's possession as he left the segregation unit; hence, although there was denial of procedural due process in that the disciplinary committee inadequately summarized evidence and reasons supporting the finding of infraction, the prisoner was not entitled to nominal damages in a civil rights suit, notwithstanding that the warden subsequently expunged the disciplinary report and reinstated the prisoner as a law clerk. (Pontiac Correctional Center, Illinois)

U.S. District Court
SOCIAL SECURITY

Graham v. Bowen, 648 F.Supp. 298 (S.D. Tex. 1986). Inmates imprisoned on felony convictions brought an action challenging the constitutionality of a statute denying social security retirement benefits to imprisoned felons on grounds that statute denied them equal protection of laws and was an ex post facto law. The district court held that: (1) the inmates of correctional facilities did not constitute a suspect class, for purposes of reviewing challenge to statute under equal protection aspect of due process clause; (2) to find constitutional infirmity in the vision of social justice chosen by government for supplemental financial assistance, based on the equal protection aspect of due process clause, there had to be reliance on prohibited criteria implicating more than existence of alternative policy choices and disparate results; and (3) denial of retirement benefits to felony prisoners would be sustained against constitutional challenges.

Although inmates of correctional facilities are seriously disadvantaged when they are compared to individuals at liberty, and although they are subject to political

hostility, inmates do not constitute a suspect class for the purpose of applying the equal protection aspect of due process clause to determining whether law affecting them is unconstitutional; inmates' status is the result of a precise, individualized application of otherwise neutral laws.

Saving money by denying old age benefits to individuals who were otherwise supported by government, through a statute denying social security retirement benefits to imprisoned felons, could not be characterized as irrational. (Department of Corrections, Texas)

U.S. Appeals Court
COURT COSTS

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
MEDICAL COSTS

Monmouth County Correct. Inst. Inmates v. Lanzaro, 643 F.Supp. 1217 (U.S.D.C. N.J. 1986). In a class action suit against county correctional officials, a sheriff and state defendants, a federal district court in New Jersey granted a preliminary injunction against policies that denied pregnant inmates the right to abortions. It ruled: (1) the county was financially obligated to assume the full cost of its inmates' elective, as well as medically necessary, abortions in view of the fact that these abortions were simply one type of elective medical treatment to which inmates were legally and equitably entitled; (2) the county was required to provide counseling services to pregnant inmates to assist them in their decisions concerning an abortion to the same extent as was required of federal prisons; (3) the county's refusal to appropriate funds for nonlife-threatening abortions violated the New Jersey Constitution, and under New Jersey law it was required to fund all medically necessary abortions upon request; and (4) the county's requirement that pregnant inmates first obtain a court-ordered release imposed a significant burden on a woman's right to choose an abortion and delayed the procedure itself so to cause substantial injuries to the plaintiffs. (Monmouth County Correctional Institution, New Jersey)

U.S. District Court
MEDICAL COSTS
RECOUPMENT

Ruley v. Nevada Bd. of Prison Com'rs., 628 F.Supp. 108 (D. Nev. 1986). Prisoner was properly assessed restitution for medical expenses incurred by state following his assault of another prisoner; "freezing" of his accounts upheld. A prison disciplinary committee found a prison inmate guilty of assaulting another inmate and assessed restitution against him for medical expenses incurred by the state as a result of assault. The prisoner's inmate trust fund account was frozen. The prisoner brought a civil rights action seeking declaratory judgment establishing the unconstitutionality of state legislation and regulations under which restitution was awarded. The federal district court held that: (1) although the prison procedure which authorized the freeze of the inmate's account went beyond the Board of Prison Commissioners' authority when it was promulgated, the Nevada legislature, in effect, ratified the procedure by amendment made to the enabling statute; (2) the prisoner had no basis for civil rights action; and (3) the prisoner was provided a meaningful opportunity to refute the case against him.

The court ruled that the Nevada Board of Prison Commissioners, as an agency of the state, was entitled to dismissal of the civil rights action against it, based on sovereign immunity.

The court affirmed that the full panoply of rights afforded criminal defendants need not be provided in a disciplinary proceeding; thus, a judicial-style evidentiary hearing is not required. What must be furnished is notice of the case and a meaningful opportunity to meet it.

The prisoner, according to the court, was provided with a meaningful opportunity to refute the case against him, and thus was not denied due process in prison disciplinary proceedings, which resulted in the freezing of his inmate's trust fund account in order to satisfy the requirement that he pay $3,000 to the state as restitution for medical expenses incurred by state as a result of his assault on another inmate. (Nevada State Prison)

U.S. Appeals Court
RECOUPMENT

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)

1987

State Appeals Court
MEDICAL COSTS

Metro. Dade County v. P.L. Dodge Foundations, 509 So.2d 1170 (Fla. App. 3 Dist. 1987). According to a state appeals court, the requirement of duty to provide medical care for a person in custody does not, in itself, create a duty to pay. In order for duty to pay to arise, it must first be established that the prisoner-patient is indigent. (Dade County Jail)

U.S. District Court
COST OF CONFINEMENT

Tate v. Frey, 673 F.Supp. 880 (W.D. Ky. 1987). Action was brought to hold Kentucky corrections officials in contempt for violating terms of an order and preliminary injunction prohibiting them from housing more than 30 state prisoners in the county jail at any time and ordering that no prisoner who was an inmate at the county jail to be allowed to remain there for more than 30 days. Evidence established that officers had been in constant and consistent violation of orders since March of 1987. Prison wardens would not be held in contempt for corrections officials' violations of order and preliminary injunction. It was not shown that wardens had any control over decisions to keep state prison inmates at the county jail, although they may have acted ministerially in response to orders issued by corrections officials. The state contemnors were ordered to pay the Metropolitan Correctional Services a fine of $100 per day per state inmate in excess of 30 and for each day over 30 a state prisoner stayed in the county jail, $25 per day. The state contemnors were also ordered to pay a fine in the amount of $25 per day to each state inmate who has been housed at the Jefferson County Jail for more than 30 days. (Jefferson County Jail)

1988

State Appeals Court
MEDICAL COSTS

Rockford Memorial Hosp. v. Schueler, 521 N.E.2d 251 (Ill.App. 2 Dist. 1988). Action was brought seeking payment for medical services rendered to an arrestee. The circuit court granted summary judgment to the hospital and appeal was taken. The appellate court, affirming the decision, found that the city was responsible for medical expenses incurred after the arrest by police officers, but prior to the arrestee being charged or placed in the sheriff's custody. The arrestee is considered not within the sheriff's custody until such a time as he is charged with a criminal offense for the purpose of the statute making the charging authority responsible for the medical expenses of an arrestee. The police officers, who processed the arrestee, noticed that he appeared high and discovered that he had swallowed approximately two grams of cocaine. They took him to a hospital for treatment and then returned him to a public safety building where he was charged. (Illinois)

1989

U.S. Appeals Court
TRANSPORTATION

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)

1991

U.S. Appeals Court
ATTORNEY FEES RECOUPMENT

Dotson v. Chester, 937 F.2d 920 (4th Cir. 1991). Inmates' federal civil rights suit challenging conditions in a county jail as unconstitutional and seeking declaratory and injunctive relief was settled, and fees awarded inmates as prevailing parties were allocated
between the county commissioners and the sheriff. After the sheriff did not pay his share and the inmates began to look to the county's assets for payment of fees allocated to the

sheriff, the commissioners moved for injunctive relief to prohibit garnishment. The U.S. District Court found that the county was subject to liability, and the commissioners appealed. Thereafter, the district court found the sheriff and county responsible for supplemental fees incurred by the inmates in attempts to execute judgment for fees rendered against the sheriff, and the commissioners appealed. The court of appeals, affirming the decisions, found that the Dorchester County Sheriff, in managing and operating the county jail in Maryland, essentially acted in the guise of a county official and held the final county policy-making authority over the county jail; if the sheriff were without funds to satisfy the settled upon fee, the county, rather than the state, was required to satisfy the sheriff's obligation. The attorney fees and costs were properly awarded under a statute providing for the award of attorney fees in federal civil rights litigation for amounts expended in an attempt to recover the portion of original attorney fee award initially allocated to the sheriff. (Dorchester County, Maryland)

U.S. Appeals Court
DAMAGES

Maul v. Constan, 928 F.2d 784 (7th Cir. 1991). A former inmate brought a civil rights suit against a psychiatrist, a director of administrative services, and a supervisor of the psychiatric care unit at a correctional institution, alleging constitutional violations from forcible administration of psychotropic medications. The U.S. District Court awarded $7,500 against each defendant. On appeal, the court of appeals found that the defendants waived a qualified immunity defense to the inmate's claim where they did not press the defense in any pretrial motions, at the pretrial conference, or at trial, and remand was warranted for clarification of the basis for the damage award of $7,500 in damages against each defendant for the due process violation. (Westville Correctional Center, Indiana)

U.S. District Court
DAMAGES

Meek v. Orton, 773 F.Supp. 172 (E.D. Mo. 1991). A prisoner incarcerated in a county jail brought a civil rights suit under Section 1983 against a jailer. After the jury returned a verdict against the jailer awarding the prisoner "zero" in actual damages and $10,000 in punitive damages, the jailer moved for judgment notwithstanding the verdict. The district court found that the Eighth Amendment protection against cruel and unusual punishment cannot be found to have been violated absent a finding that the prisoner sustained actual, albeit nominal, damages from the violation. If a jury finds that the plaintiff has suffered no pain of any kind, then the question of damages, nominal or otherwise, does not arise; an action for cruel and unusual punishment has not been established without a showing of some measure of pain of some type. Judgment notwithstanding the verdict was entered against the prisoner. (Pemiscot County Jail, Missouri)

U.S. District Court
MEDICAL COSTS

Scott v. Angelone, 771 F.Supp. 1064 (D. Nev. 1991). An inmate brought an action alleging that he was denied due process when the Nevada Department of Prisons froze his inmate trust account and deducted money for medical charges. On the defendants' motion to dismiss and motion for summary judgment and the plaintiff's motion to strike, the district court found that, where an administrative regulation establishing policy and procedure of charging an inmate $4 for each inmate-initiated, non-emergency medical visit was promulgated by the Nevada Department of Prisons, and that the Department was headed by the Board of State Prison Commissioners, the policy, practice and procedure was established with approval of the Board as required by Nevada law. It was also found that the $4 charge per visit was a "reasonable deduction" to defray the cost of an inmate's medical care within the meaning of the Nevada statute. In addition, a predeprivation hearing was not constitutionally required for charging of medical visits or freezing of an inmate's trust account for failure to maintain a minimum balance required to cover those charges, where the inmate had to authorize a charge prior to treatment and the inmate was notified of the billing system used through posting of an Administrative Directive. Where the inmate authorized charging of his account for medical visits, had prior notice that his account would be frozen if less than a certain balance were maintained to cover those charges, and was immediately reimbursed for a wrongful charging of his account for medical visits after filing an accounting inquiry with the prison, the prison officials satisfied requirements of due process in their administration of the medical charging procedure. (Northern Nevada Correctional Center, Carson City, Nevada)

U.S. Appeals Court
DAMAGES

Warren v. Fanning, 950 F.2d 1370 (8th Cir. 1991). A state inmate sued a prison physician, alleging an Eighth Amendment violation by virtue of the physician's deliberate indifference to the inmate's medical needs. The U.S. District Court entered judgment on a jury verdict finding that the physician violated the inmate's Eighth Amendment rights, but awarded the inmate neither compensatory nor moninal damages. The inmate's motion for attorney fees was denied. Both parties appealed. The court of appeals found that the inmate was entitled to nominal damages from the prison physician based on the prison physician's deliberate indifference to the inmate's medical needs in violation of the Eighth Amendment, but the jury instruction providing that the jury "may" award nominal damages was not plain error. The instruction not only was not objected to, but was also proffered by the inmate, and the effect of the incorrect instruction was only that it left the jury with the discretion to decline to award the inmate nominal damages. (Missouri Eastern Correctional Center)

U.S. Appeals Court
COURT COSTS
RECOUPMENT

Weaver v. Toombs, 948 F.2d 1004 (6th Cir. 1991). Prisoners at a state penal facility instituted a federal civil rights action against state prison officials, alleging deprivation of their constitutional rights. After granting the prisoners' motion to proceed in forma pauperis, the U.S. District Court dismissed the case. On in forma pauperis appeal, the court of appeals affirmed. The prison officials moved for an order taxing costs against the prisoners to be satisfied by a direct resort to their prison accounts. The court of appeals found that there was no constitutional basis for a rule barring collection of costs from indigent prisoners. In addition, the court of appeals had the authority to assess reasonable costs against unsuccessful in forma pauperis plaintiffs even if their claims were not deemed frivolous, malicious, or vexations. The remand of the prisoner's civil rights action against state prison officials to the judicial officer who originally permitted the prisoners to proceed in forma pauperis was warranted to ascertain whether the prisoners, or any of them, could establish entitlement to relief from collection of costs assessed therein. The court of appeals was not equipped to deal with a hearing on the question of relief, or partial relief, or extension of time for payment of costs in the case of the in forma pauperis prisoner plaintiffs against whom assessment of costs had been made. (Ionia Maximum Correctional Facility, Michigan)

1992

U.S. Appeals Court
MEDICAL COSTS

Collins v. Romer, 962 F.2d 1508 (10th Cir. 1992). Prisoners filed a civil rights suit challenging a Colorado prisoner medical copayment statute. After the statute was amended to exclude most medical services from the copayment charge, the prisoners sought attorney fees. The United States District Court awarded attorney fees, and the Colorado officials appealed. The appeals court found that the award of attorney fees was justified because the prisoners' suit was the substantial catalyst in achieving an amendment to the Colorado copayment statute eliminating the copayment requirement in most instances. Evidence supported the district court's determination of the total number of hours that were compensable in awarding attorney fees in the prisoner civil rights action. (Colorado Department of Corrections)

U.S. Appeals Court
DAMAGES

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

U.S. Supreme Court
DAMAGES

McCarthy v. Madigan, 112 S.Ct. 1081 (1992). A federal prisoner brought a *Bivens* action seeking only money damages for denial of medical care. The U.S. District Court dismissed for failure to exhaust administrative remedies. The court of appeals affirmed. The U.S. Supreme Court reversed, finding that a prisoner who sought only money damages was not required to exhaust administrative remedies provided by the Bureau of Prisons' grievance procedure. The grievance procedure presented significant procedural hurdles to the assertion of a claim and did not provide for award of money damages. (Federal Penitentiary, Leavenworth, Kansas)

1993

U.S. District Court
MEDICAL COSTS

Benter v. Peck, 825 F.Supp. 1411 (S.D. Iowa 1993). An inmate sued prison officials and a prison physician under Section 1983 claiming cruel and unusual punishment in violation of the Eighth Amendment as a result of prison officials' withholding of prescription eyeglasses to compel him to pay for the glasses. The district court found that the inmate's vision of 20/400 without his glasses constituted a "serious medical need," where the

eyesight fell within the parameters of the definition of "blindness." The inmate was unable to work at the prison or function in the general prison population without his glasses, and the prison physician's intentional refusal to provide the needed eyeglasses constituted deliberate indifference to the inmate's serious medical needs. Also, the prison officials' refusal to investigate the seriousness of the inmate's need for eyeglasses constituted deliberate indifference. The inmate was entitled to only $1.00 in nominal damages due to his failure to mitigate his ongoing difficulties by paying for the glasses himself. (Iowa State Penitentiary)

U.S. Appeals Court
COURT COSTS
DAMAGES

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
DAMAGES

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

U.S. District Court
RECOUPMENT

Eason v. Nicholas, 847 F.Supp. 109 (C.D. Ill. 1994). A state prisoner brought a Section 1983 action against state correctional center officials, alleging denial of access to courts. The parties cross-moved for summary judgment. The district court found that the officials did not impermissibly infringe on the prisoner's rights of access to courts because the prisoner had adequate access to the law library and was provided ample legal supplies and resources. Officials simply required the prisoner to complete forms authorizing later reimbursement to the state for the cost of posting the prisoner's outgoing mail. Even assuming that officials attempted to interfere with the prisoner's access to courts, the prisoner failed to show prejudice in light of court access and the prisoner's prolific litigation. (Western Illinois Correctional Center)

U.S. District Court
FINES

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

U.S. Appeals Court
DAMAGES

Kemp v. Balboa, 23 F.3d 211 (8th Cir. 1994). An inmate brought a Section 1983 action against a guard who had repeatedly confiscated his epilepsy medication. The U.S. District Court entered judgment on a jury verdict for the inmate, but awarded him only nominal damages of $1.00 and punitive damages of the same amount. The inmate appealed the nominal damage award. The appeals court found that the lay witness improperly testified on a matter about which she lacked personal knowledge. The lay witness could not properly testify that the inmate had failed to pick up medication from the infirmary on dates on which the witness was not on duty. The testimony was not based upon the witness' personal knowledge, but upon what she had read in medical records which were not themselves introduced in evidence. The case was remanded for a new trial on the issue of damages. (Central Missouri Correctional Center, Missouri)

U.S. Appeals Court
COURT COSTS

McGill v. Faulkner, 18 F.3d 456 (7th Cir. 1994) U.S. cert. denied. A state prisoner who brought an unsuccessful civil rights claim was ordered to pay costs, despite his claims of indigency, by the U.S. District Court. The prisoner appealed. The appeals court, affirming the decision, found that the prisoner waived the right to challenge the order for payment of costs by failing to object to the bill of costs. The state prisoner's unsupported allegation of indigency was not the showing of indigency needed to overcome the presumption that the costs from the unsuccessful suit would be awarded against the prisoner. No documentary support was submitted to establish indigency and the status as a state prisoner did not per se establish indigency. Awarding costs against the prisoner was not an abuse of discretion, even if the prisoner was indigent. The award of costs served a valuable purpose of discouraging unmeritorious claims and treated unsuccessful litigants alike rather than having an improper chilling effect on prisoner civil rights litigation. (Indiana State Prison)

U.S. Appeals Court
ATTORNEY FEES
DAMAGES

Sockwell v. Phelps, 20 F.3d 187 (5th Cir. 1994). Inmates filed a Section 1983 action against former Louisiana prison officials alleging that the general policy of segregating two-person cells violated equal protection. The U.S. District Court found for the inmates and cross appeals were taken. The court of appeals found that a nominal compensatory damages award to black inmates whose equal protection rights were violated by the policy was not clearly erroneous in the absence of evidence that inmates were confined without privileges when vacancies existed in two-person cells occupied by white inmates. A punitive damages award totaling $4,000 was not an abuse of discretion. An evidentiary hearing was required on reasonableness of fees before attorney fees could be awarded to the prisoners. (Louisiana State Penitentiary)

1995

U.S. Appeals Court
COURT COSTS
FINES
REMEDIES

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

U.S. District Court
COURT COSTS

Berryman v. Epp, 884 F.Supp. 242 (E.D. Mich. 1995). On a motion to tax costs in a prisoner's civil rights action, the district court found that the granting of a motion for summary judgment wherein all matters were settled was a "final hearing," within the meaning of a statute authorizing an award of nominal attorney fees, even though there was no hearing held on the motion. The court found that the prisoner failed to meet his burden to prove that he was unable to pay costs incurred by the defendant, despite his assertion without documentary support that he was unable to pay an award because he did not have a prison job and because he needed the amounts of money deposited in his prison account throughout the year. The court ordered that the present award of costs be removed from any prison account balance over $50 and that, if the amount withdrawn would cause the balance to fall below $50, no more than 20 percent of the account balance would be withdrawn in any one month until the award of $49.40 is reached. (Michigan Department of Corrections)

U.S. District Court
MEDICAL COSTS

Delverne v. Klevenhagen, 888 F.Supp. 64 (S.D.Tex. 1995). A state inmate housed in a county jail challenged the jail policy of charging him for medical services. The district court held that the policy did not violate the inmate's equal protection rights, but that the implementation of the policy may have violated the inmate's due process rights. Nonindigent county inmates were statutorily required to pay for certain medical services,

and the court found that the jail policy of not exempting state inmates was rationally related to the goals of reducing the administrative burden, curtailing frivolous requests for medical services, and avoiding an unfair tax burden on county residents. In spite of the fact that the state paid a daily fee ($20), the fee was less than the actual cost of housing an inmate ($41.74); therefore the state had not already paid for medical services as the inmate had argued. The court questioned the county's method of determining indigence and the administrative procedure employed for charging inmates, precluding summary judgment for the officials. The county policy requires inmates to pay between ten and sixteen dollars per visit to see a medical professional and inmates are charged three dollars for each prescription filled. The policy states that no inmate will be denied medical care based on his indigent status. The county stated that the fees are not charged until after a service is rendered, and only when the inmate has signed a document authorizing the charge to his inmate trust account. If the inmate is indigent he is not charged; if the inmate was not found to be indigent or did not apply for indigent status his trust fund is debited, even if the charge creates a negative balance. The court expressed concerns about the method and criteria used to determine indigency, based on the fact that an inmate may be declared non-indigent even though he has no funds in his trust account. (Harris County Jail, Texas)

U.S. District Court
MEDICAL COSTS

Hogan v. Russ, 890 F.Supp. 146 (N.D.N.Y. 1995). A prisoner filed a federal civil rights action alleging that his constitutional rights were violated by the failure of prison officials to provide for the examination of his teeth by a periodontist; the inmate sought an injunction to force the examination to be provided at state expense. The court denied the prisoner's motion for injunctive relief and dismissed the case, finding that the prisoner did not establish deliberate indifference to his medical needs. The court held that the state's refusal to pay for a dental examination advanced the state's legitimate interest in distributing its limited resources and did not violate the prisoner's equal protection. The prison policy allowed the prisoner to see a periodontist to examine and treat his teeth only at his own expense. The prison physician had recommended that the prisoner's four bad teeth be extracted without first taking X-rays. (Shawagunk Correctional Facility, New York)

U.S. District Court
MEDICAL COSTS

Martin v. Debruyn, 880 F.Supp. 610 (N.D. Ind. 1995). An inmate filed a civil rights action against various correction officials alleging a violation of the Eighth Amendment in failing to provide over the counter (OTC) medication required for treatment of an ulcer. The district court found that a prison official who withholds necessary medical care from an inmate who cannot pay for want of payment violates the inmate's constitutional rights if the inmate's medical needs are serious, but the Eighth Amendment does not guaranty free medical care and does not forbid the state from requiring that an inmate pay for medical treatment to the extent that he is able to do so. A prison official violates the Eighth Amendment by refusing to provide an inmate with prescribed OTC medicine for a serious medical need only if the inmate lacks sufficient resources to pay for the medicine. If officials refuse to provide an inmate with prescribed medicine, OTC or otherwise, for serious medical needs at a time when the inmate cannot pay for the medicine, the officials would still be liable for a constitutional violation even if the inmate later acquires a means to pay and thus acquires the medicine. There were issues of fact precluding summary judgment for the inmate concerning the inmate's ability to pay for the medication and the personal involvement of the defendants. (Indiana State Prison)

U.S. District Court
DAMAGES

Nettles v. Griffith, 883 F.Supp. 136 (E.D. Tex. 1995). A prisoner who was placed in administrative segregation without a hearing and was injured when he exited his cell after it was set on fire, brought a Section 1983 action against the county sheriff and other officials. The district court found that the appropriate damage award for the prisoner was $50 per day of segregation. The prisoner was placed in a section of the jail designated primarily for the mentally imbalanced, where his cell was set on fire and he was doused with hot water, feces, and urine. The prisoner suffered mental and emotional toll, and the prisoner's privileges such as the ability to attend church services and the day room area were diminished. However, the prisoner was not entitled to punitive damages. The only willfulness with regard to his claim was the willful decision to place him in administrative segregation, and the lack of procedure accorded to the prisoner was more the result of a misstatement and miscommunication than malice. (Jefferson County Detention Center, Beaumont, Texas)

1996

U.S. Appeals Court
FINES

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
MEDICAL COSTS

Bihms v. Klevenhagen, 928 F.Supp. 717 (S.D.Tex. 1996). An inmate brought an action objecting to a requirement that he pay for his medical care. The district court held that a county could require the inmate to pay. The court found that a state is not required to provide notice to an inmate before deducting costs for medical care from an inmate's commissary account, and that a state is not required to make an advance declaration of an inmate's indigency if the state furnishes medical services without requiring payment in advance. The court also stated that inmates should be able to have small amounts of money deposited to their commissary accounts without that money being applied to their debts to the government. (Harris County Jail, Texas)

U.S. District Court
MEDICAL COSTS

Boblett v. Angelone, 942 F.Supp. 251 (W.D.Va. 1996). An inmate brought a pro se § 1983 action alleging that he was involuntarily exposed to environmental tobacco smoke (ETS) and that he was being charged for each medical consultation regardless of his ability to pay. The district court granted summary judgment to the defendants, finding that deficiencies in the operation of a nonsmoking dormitory fell short of establishing deliberate indifference to any serious risk posed by exposure to ETS. The court noted that prison officials had demonstrated their concerns about ETS by establishing a nonsmoking dormitory and by disciplining inmates who violated the rules of the dormitory. The court also held that the fact that the state inmate was often forced to choose between necessary toiletries and adequate medical care as a result of the policy did not violate the Eighth Amendment. The court noted that prisoners merely have a constitutional right to receive needed medical treatment, but that allocation of expenses is a matter of state law. (Dillwyn Correctional Center, Virginia)

U.S. District Court
COURT COSTS
DAMAGES

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

U.S. District Court
FINES
REMEDIES

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

U.S. District Court
MEDICAL COSTS

Hudgins v. DeBruyn, 922 F.Supp. 144 (S.D.Ind. 1996). Inmates brought a § 1983 action against prison officials challenging a policy modifying the manner in which inmates could obtain over-the-counter (OTC) medication. The district court held that the policy did not constitute cruel and unusual punishment. The court found that requiring inmates to

purchase OTC from their own funds did not violate the Eighth Amendment, noting that if an inmate can afford medicine but chooses to apply his resources elsewhere, it is the inmate who is indifferent to a serious medical need. The court noted that inmates' serious medical needs were met whether they were indigent or not. (Indiana Reformatory)

U.S. District Court
MEDICAL COSTS

Hutchinson v. Belt, 957 F.Supp. 97 (W.D.La. 1996). A prison inmate brought a § 1983 action against a sheriff and prison warden challenging the constitutionality of a prison's medical copayment policy. The district court held that the inmate lacked standing to bring the suit because he did not claim that he requested, was denied, or was charged for medical services under the policy. The court held that the copayment policy did not violate the Eighth Amendment nor the inmate's rights to due process or equal protection, where the policy provided that no inmate was to be denied access to medical services due to a lack of funds. (Avoyelles Bunkie Detention Center, Louisiana)

U.S. Appeals Court
MEDICAL COSTS

Myers v. Klevenhagen, 97 F.3d 91 (5th Cir. 1996). A prisoner brought a § 1983 action against a sheriff alleging that the sheriff violated a state statute as well as the prisoner's constitutional rights by charging him for medical services despite his indigency. The district court granted summary judgment for the sheriff. Another prisoner brought a similar suit against the sheriff and the district court entered judgment for the prisoner. The appeals were consolidated and the appeals court held that the sheriff provided sufficient notice of the policy which charges nonindigent prisoners for medical services, and therefore did not violate prisoners' due process rights. The court also found that the state provided an adequate postdeprivation remedy such that any unauthorized deprivation of a prisoner's property did not violate the prisoners' due process rights. (Harris County Jail, Texas)

U.S. District Court
MEDICAL COSTS

Reynolds v. Wagner, 936 F.Supp. 1216 (E.D.Pa. 1996). County prison inmates filed a class action civil rights suit challenging a policy that charges inmates for their medical care. The district court held that fee for medical services programs do not, per se, violate the Eighth and Fourteenth Amendments because such programs do not necessarily involve arbitrary and burdensome procedures and do not necessarily result in interminable delays and outright denials of medical care. The court held that the county's fee program did not violate the First, Eighth or Fourteenth Amendments, or due process. The county charged $3.00 for a nurse's visit and $5.00 for a doctor's visit, and provided that if an inmate could not afford the fees his account was charged with a negative balance; the county could also seek to recover unpaid debts after discharge under the policy. The court found that assessing negative balances against accounts that did not have sufficient funds service did not violate Due Process where inmates could challenge individual fee assessments and where inmates were made aware of the right to challenge assessments by a description in the inmate handbook. The court held that a prison policy of charging for photocopying--coupled with charges for medical visits--did not violate the First Amendment. Prisoners were not forced to choose between taking their cases to court and adequate health care because a prison policy guaranteed that legal mail would be sent, and allowed an inmate with insufficient funds a small supply of personal hygiene items, mail supplies and a pencil, and three first class letters per week. (Berks County Prison, Pennsylvania)

U.S. District Court
MEDICAL COSTS

Robinson v. Fauver, 932 F.Supp. 639 (D.N.J. 1996). An inmate filed a § 1983 action challenging a New Jersey regulation that defined "indigent inmate," alleging the regulation violated his constitutional rights. The regulation classified an inmate as indigent when the inmate "has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances" but does not classify an inmate as indigent if he or she has a verified "outside source from which to obtain funds." State officials sought to debit the prisoner's account to reimburse the State for legal photo-copying, medical co-payments, fines, court costs, and other assessments. The inmate argued that the State could not levy such assessments on funds that he might receive from outside sources, such as family and friends. The district court upheld the regulation finding it was rationally related to legitimate interests. The court found that the regulation did not violate the equal protection clause, nor did it deprive the inmate of a property interest in violation of due process. (Riverfront State Prison, New Jersey)

U.S. District Court
FINES

Ross v. Thompson, 927 F.Supp. 956 (N.D.W.Va. 1996). An inmate filed a petition for a writ of habeas corpus when he refused to sign an installment schedule agreement for unpaid fines and was therefore not released from confinement. The district court held that the inmate was not being held merely upon an unfounded internal Bureau of Prisons policy which would have warranted habeas corpus relief, but that the policy and procedure were securely grounded in--and authorized by--a statutory mandate that no prisoner be on supervision unless the prisoner had agreed to adhere to an installment schedule to pay for any fine imposed. (Federal Correctional Institution, Morgantwon, West Virginia)

U.S. Appeals Court
FEES

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
COURT COSTS

Treff v. Galetka, 74 F.3d 191 (10th Cir. 1996). An inmate filed a § 1983 suit against a prison mailroom supervisor, individually and in his official capacity, alleging violation of his rights by failing to process his outgoing mail. The district court granted summary judgment for the supervisor and the inmate appealed. The appeals court affirmed, finding that the inmate failed to prove that his mail was not delivered, that the mailroom supervisor was responsible for the alleged nondelivery, and that the supervisor acted intentionally or with deliberate indifference. The court also ruled that the improved financial condition of the inmate during the course of the litigation warranted the imposition of a requirement that he pay fees and costs. (Utah State Prison)

1997

U.S. District Court
COURT COSTS
FEES

Beck v. Symington, 972 F.Supp. 532 (D.Ariz. 1997). Inmates brought a class action suit challenging Arizona statutes that require inmates to pay court fees and costs. The district court held that the statutes did not affect an inmate's ability to gain adequate, sufficient and meaningful access to courts, and that the statutes had a reasonable basis and therefore could withstand an equal protection challenge. According to the court, the statutes simply forced an inmate to make the same economic choices required of unincarcerated litigants, and required only a 20% initial payment with 20% installments thereafter. The court noted that the statutes allowed the filing of an action by an inmate who was unable to pay. (Arizona Department of Corrections)

U.S. District Court
MEDICAL COSTS

Gardner v. Wilson, 959 F.Supp. 1224 (C.D.Cal. 1997). An inmate sued prison officials and others, challenging the constitutionality of five dollar copayments imposed on medical visits. The district court dismissed the case, finding that the copayment was not cruel and unusual punishment and did not violate equal protection. The court held that the inmate had received due process and that the law authorizing copayments was neither an ex post facto law nor a bill of attainder. The inmate was provided with due process because he was notified of the copayment policy before he initiated a medical visit, and he was provided with access to a grievance system that permitted him to challenge any erroneous charges. The court noted that assuring that inmates did not abuse their access to scarce medical services was a legitimate state purpose for requiring an inmate to pay a five dollar copayment for medical services. The inmate had requested the return of his fees because the taxpayers of California had not been provided with a rebate or the corrections department's budget had not been cut as a result of the taxpayer savings resulting from the copayment policy. The inmate also sought $1 million in damages for "stress, anxiety, suffered mentally and emotionally and in some ways, physically as well." (California State Prison-Los Angeles County)

U.S. District Court
COSTS OF
CONFINEMENT

Gleave v. Graham, 954 F.Supp. 599 (W.D.N.Y. 1997). A former inmate at a private halfway house brought a pro se action alleging violation of his due process rights in connections with the assessment of fees to offset the costs of his confinement at the halfway house. The district court held that requiring the inmate to pay the costs of his incarceration did not violate due process. The court also held that the inmate's due process rights were not violated by the Bureau of Prisons' subdelegation of authority to the halfway house to recover costs from the inmate's wages and veterans' benefits. The court found that the inmate's veterans' benefits, as an element of his gross income, were properly subjected to fee calculation. (Buffalo Halfway House, New York, and Federal Bureau of Prisons)

U.S. District Court
COST OF CONFINE-
MENT
FINES

Grove v. Kadlic, 968 F.Supp. 510 (D.Nev. 1997). A former inmate challenged the constitutionality of a county's pursuit of reimbursement of costs of his incarceration, alleging the county had a policy of converting fines for nonjailable offenses into jail time. The district court held that the former inmate had standing to challenge a state statute authorizing counties to seek reimbursement of incarceration costs but that the inmate lacked standing to challenge the constitutionality of the county's alleged policy. The district court dismissed the case, finding that the fine reimbursing incarceration costs did not violate the double jeopardy clause and did not violate the excessive fines clause. According to the court, the $630 fine, which was $30 per day for each of his 21 days of incarceration, was proportionate to the damage caused to the government--the costs resulting from incarceration. The court noted that the statute applied only to inmates who

had been convicted of crimes, and that the enforcement of debt by contempt of court was not explicitly prohibited. (Washoe County, Nevada)

U.S. Appeals Court
COURT COSTS

In re Smith, 114 F.3d 1247 (D.C.Cir. 1997). An inmate sought a writ of prohibition against the U.S. Department of Justice and the U.S. Parole Commission prior to his release from prison, seeking to correct his parole files and seeking compensatory and punitive damages under the Privacy Act of 1974. The appeals court held that the fee requirements of the Prison Litigation Reform Act (PLRA) applied to the petition, and that the term "civil action" as used in PLRA includes a petition for writ of prohibition which contains underlying claims which are civil in nature. The court found that the inmate was obligated to fulfill applicable PLRA requirements and to pay amounts due under the statute, notwithstanding his subsequent release. According to the court, if a litigant is a prisoner on the day he files a civil action, the Prison Litigation Reform Act applies. (United States Parole Commission)

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

Kincade v. Sparkman, 117 F.3d 949 (6th Cir. 1997). A prisoner petitioned for habeas corpus in two separate actions and the district court denied relief. The appeals court held that the fee requirements of the Prison Litigation Reform Act (PLRA) did not apply to either petition. But the appeals court noted that if a prisoner proceeding in forma pauperis attempts to "cloak" another civil action, such as an alleged civil rights violation, under the auspices of a petition for habeas corpus or a petition for postconviction relief, the district court must assess the prisoner the applicable PLRA filing fee. (Kentucky)

U.S. Appeals Court
COURT COSTS

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. 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. Appeals Court
COURT COSTS

McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997). A state inmate brought a § 1983 action against a sheriff's department and officials for failing to serve a summons. The district court dismissed the action, and the appeals court affirmed and remanded. The appeals court set out procedures for handling prisoner and nonprisoner in forma pauperis complaints and appeals, finding that the inmate was not deprived of access to courts by the $14.60 charge the sheriff sought for serving the summons. The appeals court found that under the Prison Litigation Reform Act (PLRA), the only issue is whether an inmate pays the entire filing fee at the initiation of a proceeding or over a period of time under an installment plan. Under PLRA, prisoners are no longer entitled to a waiver of fees and costs. The court found that by filing a complaint of notice of appeal, a prisoner waives any objection to a fee assessment by the district court, and waives any objection to the withdrawal of funds from his trust account by prison officials to pay court fees and costs. (Ingham County Sheriff's Department, Michigan)

U.S. Appeals Court
COURT COSTS

Newlin v. Helman, 123 F.3d 429 (7th Cir. 1997). An inmate brought a § 1983 action against persons involved with a criminal prosecution against him. The district court found that the inmate had two strikes for the purposes of the Prison Litigation Reform Act (PLRA) based on a dismissed § 1983 action and a subsequent appeal. The court held that a prisoner who becomes ineligible under PLRA to continue litigating in forma pauperis and who then files additional suits or appeals yet does not pay necessary fees, loses the ability to file future civil suits. The court held that filing and docket fees owed by the inmate could be collected from the inmate's trust account using the mechanism of a statutory provision for handling partial fee payments. (Indiana)

U.S. Appeals Court
COURT COSTS

Norton v. Dimazana, 122 F.3d 286 (5th Cir. 1997). A state inmate sued prison staff under § 1983 alleging that their deliberate indifference to his medical needs violated the Eighth Amendment. The district court denied the inmate's motion to proceed in forma pauperis and assessed a partial filing fee as required by the Prison Litigation Reform Act (PLRA). The inmate's claims were then dismissed as frivolous. The inmate appealed and was granted permission to proceed in forma pauperis on appeal. The appeals court assessed a $40 initial partial filing fee for the appeal and ordered the inmate to pay the remainder of the filing fee in installments pursuant to PLRA. The appeals court held that

the PLRA's filing fees provisions do not deny prisoners constitutionally guaranteed access to courts because those provisions guarantee that lack of money will not preclude any inmate from pursuing a civil action or from appealing a civil or criminal judgment. According to the court, PLRA sufficiently guarantees that all prisoners will have access to the courts, regardless of their incomes. (Texas Department of Criminal Justice)

1998

U.S. District Court
COURT COSTS

Anderson v. Sundquist, 1 F.Supp.2d 828 (W.D.Tenn. 1998). After having three suits against a prison dismissed as frivolous, a prisoner filed a fourth action. The district court held that the prisoner would be required to pay the $150 filing fee for the fourth action, even though the action would be immediately dismissed if the prisoner sought to proceed in forma pauperis. The court ruled that it could apply sanctions to the prisoner in addition to those provided for by statute. The district court held that the prisoner's privacy right in his cell was not violated by prison inspections. (West Tennessee High Security Facility)

U.S. Appeals Court
COST OF CONFINEMENT

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
COURT COSTS
PLRA-Prison Litigation Reform Act

Friedland v. Fauver, 6 F.Supp.2d 292 (D.N.J. 1998). A parolee brought a § 1983 action against state parole officials alleging violation of his rights in connection with his arrests and separate parole proceedings that resulted in revocation of parole. Parole officials had found that the parolee failed to obtain permission to move and failed to make restitution. The district court held that the parolee's claims were cognizable under § 1983 even though he was currently confined. According to the court, the business manager of the institution at which the parolee was currently confined was required to forward payments from the parolee's account to the clerk of the court to be applied to his filing fee. (New Jersey Department of Corrections)

U.S. District Court
COST OF CONFINEMENT

Gleave v. Graham, 4 F.Supp.2d 163 (W.D.N.Y. 1998). A former inmate at a private halfway house brought a pro se action alleging violation of his due process rights in connection with assessment of fees to offset the costs of his confinement. The district court held that the inmate was obligated to pay the subsistence fees, even though he was sentenced to the house and claimed that the obligation extended only to those going there voluntarily. The court found that the halfway house could base the amount the inmate was required to pay as subsistence in part upon his monthly veterans benefits. The court noted that the inmate was offered the opportunity of paying the charges or being transferred to a prison, after he initially refused to make the payments. (Buffalo Halfway House, Inc., New York, and Federal Bureau of Prisons)

U.S. District Court
COURT COSTS

Losee v. Maschner, 113 F.Supp.2d 1343 (S.D.Iowa 1998). An inmate brought an action against a warden alleging that the state was violating the provisions of the Prison Litigation Reform Act (PLRA) by improperly collecting payments from his inmate account to apply against his court filing fees. The district court denied the inmate's request for an order, finding that the PLRA provision requiring monthly payments if the amount in the prisoner's account exceeds ten dollars, requires only that the balance exceed ten dollars at some time during the month, and that the inmate was not entitled to a notice of the date on which the state would collect the monthly filing-fee from his account. (Iowa State Penitentiary)

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. District Court
COURT COSTS
FINES

Mujahid v. Crabtree, 999 F.Supp. 1398 (D.Or. 1998). A prisoner brought a habeas corpus proceeding seeking to avoid sanctions for refusing to participate in a voluntary payment program for fines and debts. The district court denied the petition, finding that the requirements for monthly payments under the program did not conflict with the terms governing payment of the fine contained in the prisoners judgment of conviction. The court also held that the federal Bureau of Prison's promulgation of regulations governing fine and debt repayment did not constitute usurpation of judicial authority. The amount required under the Bureau's Inmate Financial Responsibility Program (IFRP) was less than the sum required under his sentence and the court did not establish a timetable for payment. (FCI Sheridan, Oregon)

U.S. Appeals Court
COURT COSTS

Murray v. Dosal, 150 F.3d 814 (8th Cir. 1998). An indigent prisoner filed a petition under the All Writs Act alleging violation of his constitutional rights arising out of the refusal of a clerk of the court to file a civil rights complaint without a partial filing fee, as mandated by the Prison Litigation Reform Act (PLRA). The district court denied the petition and the appeals court affirmed. The appeals court held that the imposition of a filing fee did not unconstitutionally burden the prisoner's right of access to courts and the fee requirement was rationally related to legitimate government interests. The appeals court also held that the assessment of the filing fee against the prisoner's prison account did not violate the principles of procedural due process. (Minnesota)

U.S. Appeals Court
RESTITUTION

Parrish v. Mallinger, 133 F.3d 612 (8th Cir. 1998). A state prisoner and his wife filed a § 1983 action against three prison officials who seized funds that came into the prisoner's inmate account. The officials had seized the funds to satisfy the prisoner's obligations under the Iowa Victim Restitution Act. After the district court concluded that two officials had violated the prisoner's due process rights, the appeals court remanded for further consideration. The district court granted qualified immunity to the officials and dismissed the wife's claims and the appeals court affirmed. The appeals court held that prison officials' ability to seize money that came into a state prisoner's inmate account from a source outside of the prison, and apply that money to satisfy the prisoner's valid restitution debt, did not violate the prisoner's substantive due process rights. (Iowa State Penitentiary)

U.S. District Court
COURT COSTS

Richmond v. Stigile, 22 F.Supp.2d 476 (D.Md. 1998). An inmate brought a § 1983 action against prison officials alleging that deductions from his inmate account, assessed under the Prison Litigation Reform Act (PLRA), violated his right to due process and deprived him of basic hygienic needs. The district court held that the filing fees were properly assessed to the inmate and that even if prison officials had not complied with the PLRA provisions in deducting funds from the inmate's account, the inmate could not prevail on his due process claim because he failed to demonstrate that the deprivation occurred as the result of an established state procedure rather than from an unauthorized failure of state agents to follow an established state procedure. The court found that the inmate's claim that he was deprived of basic hygiene articles because of the filing fee deductions did not rise to the level of an Eighth Amendment deprivation because the deprivation was not sufficiently lengthy or serious. (Western Correctional Institution, Maryland)

U.S. Appeals Court
COURT COSTS

U.S. v. Garcia, 135 F.3d 951 (5th Cir. 1998). After a judgment was entered in favor of prison officials in an inmate's civil rights action, the inmate appealed and applied to proceed in forma pauperis. The inmate was ordered to pay a filing fee in installments but refused to sign a consent form authorizing withdrawals from his trust account. The appeals court held that a form authorizing the corrections department to withdraw from the inmate's trust fund account 20% of each deposit made to the account until the full amount of the federal appellate filing fee was satisfied did not violate the Prison Litigation Reform Act , although the form did not prohibit withdrawals from the account if its balance was less than $10. (Texas Dept. of Criminal Justice)

1999

U.S. District Court
COURT COSTS

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 ordered jail officials to withdraw monthly payments equal to 20% of all deposits credited to the inmate's account during the previous month to be paid to the clerk of courts, when the amount in the account exceeds $10, until the entire $150 court filing fee is paid. (Shelby County Correctional Center, Tennessee)

U.S. District Court
COURT COSTS

Luedtke v. Bertrand, 32 F.Supp.2d 1074 (E.D.Wis. 1999). When a magistrate recommended denial of his petition to proceed in forma pauperis with a prison civil rights action, a prisoner objected. The federal district court rejected the objections, finding that since the prisoner created his own "destitution," he could not claim an exception to the Prison Litigation Reform Act (PLRA). The court held that because the prisoner had exhausted his trust account because of filing "serial lawsuits of an egregiously frivolous nature," he could not claim an exception under PLRA. The court ruled that the prisoner could not go ahead with any additional civil rights cases until filing fees for his prior cases were paid in full. (Wisconsin)

U.S. Appeals Court
COURT COSTS
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. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
DAMAGES

Rayton v. Horn, 49 F.Supp.2d 791 (E.D.Pa. 1999). A state prisoner brought a suit against prison officials under § 1983 challenging the withdrawal of funds from his prison account to pay for the medical expenses of an officer injured in a prison disturbance. The district court held that the prisoner failed to state a viable claim that his due process rights were violated by the withholding of funds. The prisoner had been ordered to pay a percentage of the medical costs as the result of disciplinary proceedings. (State Correctional Institution at Greene, Pennsylvania)

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. Appeals Court
COURT COSTS

Talley-Bey v. Knebl, 168 F.3d 884 (6th Cir. 1999). State prisoners brought a § 1983 action against state corrections officials alleging denial of their access to the courts and cruel and unusual punishment. The district court granted summary judgment for the officials and awarded costs. The appeals court held that the officials' refusal to accept outgoing legal mail from a prisoner or to forward a grievance form from one prisoner to another did not violate access to court or Eighth Amendment rights. The appeals court found that taxing of costs against prisoners under the provisions of the Prison Litigation Reform Act (PLRA) was proper, regardless of their ability to pay, and that the costs imposed were to be equally divided among all participating prisoners. (Oaks Correctional Facility, Michigan)

U.S. District Court
COST OF CONFINE.

Woodley v. Department of Corrections, 74 F.Supp.2d 623 (E.D.Va. 1999). An inmate petitioned for a writ of habeas corpus challenging his parole revocation and a policy of the parole board that required him to serve the total remaining time of his sentence without consideration of good time allowances he had earned. The district court dismissed the action, finding that the revocation of the inmate's parole for failing to agree to pay the costs of living at a halfway house presented no cognizable constitutional grounds for habeas relief. The court found that the inmate had received all the constitutional due process to which he was entitled and that a policy change by the board did not violate the inmate's equal protection rights or create an ex post facto application of the law. The parole board had changed its policy to require that all persons violating parole after a certain date must serve the entire unserved portion of the term originally imposed by the court. (Virginia Parole Board and Onesimus House, Virginia)

2000

U.S. District Court
CO-PAYMENT

Beerheide v. Suthers, 82 F.Supp.2d 1190 (D.Colo. 2000). Three state prisoners who were Orthodox Jews brought a § 1983 action against state prison employees for failing to provide them with kosher meals. The district court granted a permanent injunction against a proposed prison co-payment program that would have required the prisoners to pay 25 percent of the cost of their kosher diet. The court found that the proposed co-pay policy would place an unnecessary burden on the prisoners' First Amendment right to free exercise of religion. The court held that the state prison's budgetary considerations and its goal of preventing inmate abuse of religious diets were not rationally related to the proposed co-pay program and that the Jewish inmates did not have a viable alternative for observing a kosher diet. The court concluded that the cost of providing kosher meals had a de minimis effect on the prison's food service budget. Prison officials had testified that the cost of a kosher meal is between $2.50 and $4.50 and that the co-pay program would have required the prisoners to pay approximately $90 per month. (Colorado Department of Corrections)

U.S. District Court
CONTRACT SERVICES

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

U.S. District Court
COURT COSTS
PLRA-Prison Litigation Reform Act

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. Appeals Court
COST OF CONFINEMENT

Tillman v. Lebanon County Correctional Facility, 221 F.3d 410 (3rd Cir. 2000). An inmate brought a pro se § 1983 action against a county correctional facility and its warden, challenging the levying and collection of a fee for housing costs incurred during his periods of incarceration for state parole violations. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the fee of roughly $4,000 imposed on inmate for housing costs did not violate the excessive fines clause, that the inmate was not denied procedural due process, and that the inmate was not deprived of equal protection. The county had confiscated half of the funds in his wallet and half of the funds sent on his behalf in order to partially collect the fee and turned his remaining debt over to a collection agency following his release from prison. The court noted that the inmate was not deprived of equal protection because "trusty" inmates were not charged for housing costs because they "paid" their housing costs by providing labor. The county charged inmates $10 per day. (Lebanon County Correctional Facility, Pennsylvania)

U.S. Appeals Court
EVIDENCE

Webb v. Anderson, 224 F.3d 649 (7th Cir. 2000). A state prisoner filed a petition for a writ of habeas corpus after he lost 90 days of good time credit for drug use. The district court denied the petition and the appeals court affirmed. The appeals court held that a toxicology report and chain of custody slip constituted "some evidence" supporting the decision to impose disciplinary sanctions on the inmate for drug use. The chain of custody slip confirmed the collection of a urine sample and the sealing of that specimen, transmission of the specimen to a hospital laboratory, and receipt of the hospital laboratory in sealed condition. (Indiana State Prison)

U.S. Appeals Court
COST OF CONFINEMENT
EXCESSIVE FINES CLAUSE

Wright v. Riveland, 219 F.3d 905 (9th Cir. 2000). An inmate brought a class action suit against the secretary of a state corrections department challenging a state law that authorized a 35% deduction from all funds received by inmates from outside sources. The federal district court dismissed the constitutional claims but declared the law void in part to the extent that it impaired certain federal statutory rights. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the 35% deduction was not a "tax" within the meaning of the Tax Injunction Act but that the inmate class had sufficiently demonstrated standing to challenge the statute as violating the Excessive Fines Clause. The appeals court held that the ERISA anti-alienation provision did not prevent the corrections department from deducting funds under the state law from benefits received from ERISA-qualified pension plans. The appeals court

refused to consider claims that the corrections department failed to pay interest on personal inmate savings accounts. (Washington Department of Corrections)

2001

U.S. Appeals Court
TELEPHONE

Arsberry v. Illinois, 244 F.3d 558 (7th Cir. 2001). Prison and jail inmates, inmates' families, and a public-interest law firm brought an action against a state, state agencies and officials, and telephone companies, challenging the practice by which prisons and jails each granted one telephone company the exclusive right to provide inmate telephone service in exchange for a portion of the revenues generated. The suit was brought under § 1983, the Sherman Act, and state law. The federal district court dismissed the case for lack of jurisdiction. The appeals court modified and affirmed the district court decision. According to the appeals court, the exorbitant telephone rates resulting from the challenged practice did not violate the First Amendment and the practice did not result in unconstitutional takings. The court also found that the practice did not violate anti-trust laws, and that the state officials responsible for the practice were entitled to qualified immunity from damages under § 1983, given the "novelty" of the action. (Illinois)

U.S. District Court
MEDICAL COSTS

Breakiron v. Neal, 166 F.Supp.2d 1110 (N.D.Tex. 2001). A county prisoner brought a § 1983 action seeking damages for injuries he sustained when a jail door closed on him, and for alleged intentional or deliberate deprivation of medical care. The court held that the county's act of deducting payments from the prisoner's inmate trust account did not violate the prisoner's rights because it was rationally related to the county's legitimate interest in the efficient use of prison resources and the prisoner was not denied medical treatment as the result of any inability to pay for medical treatment. (Hunt County Jail, Texas)

U.S. District Court
MEDICAL COSTS

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 held that the jail's policy of charging inmates with the ability to pay for medical services did not violate the Eighth Amendment, absent evidence that any serious medical need went untreated as a result of the policy. The court noted that it is constitutionally acceptable to charge inmates a small fee for health care when indigent inmates are guaranteed service regardless of their ability to pay. (Multnomah County Jails, Oregon)

U.S. District Court
MEDICAL COSTS

Lutz v. Smith, 180 F.Supp.2d 941 (N.D.Ohio 2001). A man who was arrested for domestic violence brought a § 1983 action against a sheriff and others alleging deliberate indifference to his medical needs while he was in custody. The district court granted summary judgment in favor of the defendants. The court found no violation in the actions of the sheriff's staff when they declined to accompany the arrestee in an ambulance that transported him from the jail to a hospital to treat him for an overdose of medication he ingested before he was arrested. The arrestee was returned to the jail after receiving treatment. The court held that the county acted properly by ensuring that the arrestee received treatment when he became ill in custody and the county was not required to do so in a manner that made it responsible for the expense of the treatment. (Hardin County Jail, Ohio)

U.S. Appeals Court
COMMISSARY
INMATE FUNDS
RECOUPMENT

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. District Court
COST OF
CONFINEMENT
PRETRIAL DETAINEE
DUE PROCESS

Allen v. Leis, 213 F.Supp.2d 819 (S.D.Ohio 2002). A former pretrial detainee brought a class action under § 1983 challenging the constitutionality of a county jail's pay-for-stay program. The district court granted summary judgment in favor of the plaintiffs. The court held that the jail's policy of appropriating cash immediately upon a pretrial detainee's arrival at jail to cover the "booking fee" was not statutorily authorized, and that the jail's policy violated due process. The court noted that a detainee could obtain a refund of funds paid if the charges were subsequently dismissed or if the detainee was acquitted, but the court found this post-deprivation remedy to be inadequate. The county had adopted a $30 book-in fee in order to defray a portion of the booking cost. Incoming prisoners were asked to sign a Release of Funds Waiver, but they were also

advised that their refusal to sign the waiver had no effect because the book-in fee was taken from the prisoner with or without his signature on a waiver. In 1999, the county collected over $468,000 under the program, from 50,134 inmates. (Hamilton County Justice Center, Ohio)

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

Atchison v. Collins, 288 F.3d 177 (5th Cir.2002). An inmate filed a motion asking the federal court to compel a correction department to deduct no more than 20% of his monthly income to pay for filing fees incurred as the result of unsuccessful actions in federal court. The district court denied the motion and the appeals court affirmed. The department had been deducting 60 percent to pay for three filing fees on which the inmate owed money; the appeals court held that the twenty-percent-of-income payments provided for under the Prison Litigation Reform Act (PLRA) must be calculated "per case" rather than "per prisoner." (Texas Dept. of Criminal Justice, Eastham Unit)

U.S. Appeals Court
COPAYMENT

Beerheide v. Suthers, 286 F.3d 1179 (10th Cir. 2002). Three state prisoners who were Orthodox Jews brought a § 1983 action against prison officials based on the officials' failure to provide them with free kosher meals. The district court granted a permanent injunction and the officials appealed. The appeals court affirmed, finding that failure to provide free kosher meals violated the First Amendment, and that a proposal under which the prisoners would be required to make a 25% co-payment for the cost of providing such meals was not rationally related to the legitimate penological concerns of cost and abuse. The court also found that the officials' alternative proposals that the prisoners buy their kosher meals at the prison canteen, or have the Jewish community provide the meals, were not reasonable. (Freemont Correctional Facility, Colorado)

U.S. District Court
COURT COSTS

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 Correctional Facility, Tennessee)

U.S. Appeals Court
DUE PROCESS
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. The court also found that a state law that provided for the collection of a crime victims' assessment from the inmate's account was void to the extent that it allowed prison officials to deduct funds derived from the inmate's veteran's disability benefits. The court found that allegations supported a claim for a procedural due process violation. (ATDC, Avenel, New Jersey)

U.S. Appeals Court
COURT COSTS

In re Alea, 286 F.3d 378 (6th Cir. 2002). A state inmate petitioned for a writ of prohibition to prevent the U.S. District Court from further collections of money from his prison account for payment of a filing fee in his dismissed civil rights action. The appeals court denied the petition, finding that the dismissal of the suit under the three-strikes provision of the Prison Litigation Reform Act (PLRA) did not obviate the requirement that he pay the district court filing fee. The court noted that under PLRA, pauper status for inmates no longer exists and all prisoners must pay the required filing fees and costs and are not entitled to a waiver. (U.S. District Court, Kentucky)

U.S. Appeals Court
DISPOSITION OF FUNDS

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
FEES

Payton v. County of Kane, 308 F.3d 673 (7th Cir. 2002). Arrestees brought an action against two county jails that charged a bond fee, above and beyond the set bail amount, as a condition of their release. The district court dismissed the action and the arrestees appealed. The appeals court reversed and remanded. The appeals court held that the arrestees sufficiently satisfied their standing requirement by alleging violation of their Eighth and Fourteenth Amendment rights. The court noted that the arrestees suffered monetary injury when they were required to

make the extra payments, and that these injuries could be traced to the policy of each jail. A 1999 Illinois law allowed a bond fee to be added to the required bond and set the fee at $1. The law empowered county boards to increase the statutory fee by ordinance if the increase is justified by an acceptable cost study that demonstrates that the $1 fee is not sufficient to cover the costs of providing the service. Nineteen of Illinois's 102 counties charged a bail fee at the time of the appeal. The plaintiff arrestees were charged $11 on one jail and $15 in another. (Kane County Jail and DuPage County Jail, Illinois)

U.S. Appeals Court
RECOUPMENT

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. Appeals Court
DAMAGES
RESTITUTION
DUE PROCESS

Barber v. Wall, 66 Fed.Appx. 215 (1st Cir. 2003). [unpublished] A prisoner brought an action alleging that a debit from his prison account, taken to satisfy restitution orders entered against him by a prison disciplinary review board for destruction of government property, violated due process and equal protection. The district court dismissed the action and the appeals court affirmed. The appeals court held that the debit did not violate due process, where the prisoner admitted that he had received disciplinary reports giving him notice of destruction of property charges against and the estimated repair costs, and that he was afforded a disciplinary hearing as well as administrative review. (Adult Correctional Institute, Rhode Island)

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

DeBlasio v. Gilmore, 313 F.3d 396 (4th Cir. 2003). A prisoner brought an in forma pauperis § 1983 action challenging a state's refusal to pay for his certified or registered "legal" mail. After the prisoner was released, the district court dismissed the action for failure to pay required filing fees. The former prisoner appealed; the appeals court vacated and remanded. The appeals court held that the former prisoner was not required to pay the remaining balance of his filing fee under the provisions of the Prison Litigation Reform Act (PLRA), since the prisoner had been released. The court noted that whether the prisoner had an obligation to pay filing fees was to be determined solely by whether he qualified for in forma pauperis status under the general statute. When he first filed the action, the prisoner signed a consent form agreeing to pay a filing fee of $150, but was told that he could pay it in installments if the court granted him in forma pauperis status. (Lunenburg Correctional Center, Virginia)

U.S. District Court
COURT COSTS
PLRA-Prison Litigation Reform Act

Ippolito v. Buss, 293 F.Supp.2d 881 (N.D.Ind. 2003). A prisoner whose in forma pauperis § 1983 suit was dismissed for failure to state a claim, moved to prevent further withdrawals on his prison account to satisfy any unpaid portion of the filing fee in his case. The prisoner asked to be allowed to pay the amount due no later than six months after his release from prison. The district court denied the motion, finding that the Prison Litigation Reform Act (PLRA) required the prisoner to pay the filing fee in monthly installments of 20 percent of the preceding month's income credited to his prison account. (Indiana)

U.S. District Court
COURT COSTS

Risdal v. Iowa, 243 F.Supp.2d 970 (S.D.Iowa 2003). A prisoner brought a pro se habeas corpus proceeding challenging the imposition of prison discipline. The defendants moved to dismiss the case based on a procedural default in state post-conviction proceedings. The district court denied the motion, finding that the state rule that requires litigants to have been unsuccessful in three or more suits to post a cost bond, infringed on a fundamental liberty right as applied to petitions filed by state prisoners. The court found that the state could not constitutionally block access to postconviction relief by applying a civil rule that permitted the court to impose a stay until any litigant, who had filed three or more unsuccessful actions in the past five years, posted a cost bond. (Iowa State Penitentiary)

U.S. Appeals Court
PRISONER ACCOUNTS

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. District Court
COURT COSTS

Abney v. Alameida, 334 F.Supp.2d 1221 (S.D.Cal. 2004). A state prisoner brought an action against a state corrections director alleging violations of the Fifth Amendment Takings Clause, the Equal Protection Clause, and due process. The prisoner alleged breach of judiciary duty and violations of state regulations regarding prison trust accounts, in connection with deductions taken from deposits made to the prisoner's trust accounts in order to pay court-ordered restitution. The court held that deductions taken from checks and money orders that were to be deposited into the prisoner's trust account in order to satisfy court-ordered restitution, did not violate the Takings Clause, where the restitution was duly authorized by state law. The court held that the director did not violate equal protection by allowing city and county inmates a $300 exemption of funds held in their trust accounts from collection to satisfy restitution orders, but not affording the same exemption to state prisoners, because the difference in the length of incarceration terms and nature of convictions suggested that jail inmates would be able to satisfy restitution fines more quickly because they would be released into the workforce sooner than state prisoners. (California Department of Corrections)

U.S. Appeals Court
COURT COSTS

Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004). State prisoners filed a § 1983 action and sought permission to proceed in forma pauperis under the Prison Litigation Reform Act (PLRA). The district court dismissed the action, finding that the prisoners could not litigate jointly in forma pauperis. The prisoners appealed. The appeals court reversed and remanded, finding that the district court was required to accept a joint complaint filed by multiple prisoners, if the criteria of permissive joinder were satisfied. The court held that each prisoner was required to pay one filing fee. (Wisconsin)

U.S. District Court
FEES
PRISONER ACCOUNTS

Taylor v. Sebelius, 350 F.Supp.2d 888 (D.Kan. 2004). A state prison inmate brought a civil rights action against state officials, alleging that a state regulation imposing a $25 monthly supervision fee on parolees was unlawful and violated his rights under the ex post facto clause and the Fifth, Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the officials. The court held that the deduction of parole supervision fees from the inmate's account was not cruel and unusual punishment and the regulation did not violate the ex post facto clause. The inmate claimed that he was unable to purchase basic hygiene items for a short time because of the fees. The court found that the state legislature did not intend the fee to be punitive and the fee was not so extreme as to constitute punishment. According to the court, collection of the fee was reasonably related to legitimate penological interests. The court held that due process did not entitle the prison inmate to a hearing before the money was taken from his inmate account. (Winfield Correctional Facility, Kansas)

2005

U.S. District Court
APA- Administrative Procedures Act

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. District Court
PAROLE

Owens v. Sebelius, 357 F.Supp.2d 1281 (D.Kan. 2005). A state prison inmate who had been returned to custody after violating his parole sued officials, challenging a deduction from his prison trust account for fees incurred for supervision while he was on parole. The prisoner alleged that the deductions caused him "undue hardships" and "denied the opportunity to maintain his sanitary hygienic needs" because he was unable to purchase hygiene items. The district court dismissed the case. The court found that the deduction did not constitute the infliction of cruel and unusual punishment, was not an impermissible ex post facto law, and did not violate the inmate's equal protection or due process rights. According to the court, the $25 per month fee was a reasonable reimbursement for the costs of supervision, such as electronic

monitoring equipment, drug screening, and surveillance services. The court noted that the inmate did not allege that he was denied free basic hygiene supplies. (Winfield Correctional Facility, Kansas)

U.S. Appeals Court
DUE PROCESS
COST OF CONFINEMENT
PRETRIAL DETAINEE

Slade v. *Hampton Roads Regional Jail,* 407 F.3d 243 (4th Cir. 2005). A pretrial detainee sued a jail, challenging the constitutionality of a one-dollar per day charge that was intended to partially defray the costs of incarceration. The district court dismissed the complaint and the detainee appealed. The appeals court affirmed, finding that the charge was not punishment, and therefore did not violate due process. According to the court, the state statute that authorized the charge expressed no intent to punish on its face, was an effort to offset the cost of housing, had a rational relationship to a legitimate governmental interest, and was not excessive in relation to that purpose. The court also held that due process was not violated by the lack of a hearing before the charge was deducted from the detainee's account. (Hampton Roads Regional Jail, Virginia)

U.S. District Court
INMATE FUNDS

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
PRISONER ACCOUNTS
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. District Court
COST OF CONFINEMENT
PRETRIAL DETAINEE
PRISONER ACCOUNTS

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. Appeals Court
RECOUPMENT

Americans United for Separation of Church and State v. *Prison Fellowship Ministries, Inc.*, 509 F.3d 406 (8th Cir. 2007). A separation of church and state advocacy group, state prison inmates, and others, sued the State of Iowa and a Christian provider of rehabilitation services, claiming that funding of a contract with the Christian organization providing pre-release rehabilitation services to inmates violated the Establishment Clause. The district court granted declaratory and equitable relief in favor of advocacy group and the inmates. The provider and state corrections officials appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the state funding constituted an endorsement of religion, but that the district court abused its discretion in awarding recoupment of state funds that had

been paid to the provider. The court noted that even though the provider had the ability to repay the funds, the district court gave no weight to the fact that specific statutes authorized the funding, made no finding of bad faith by the state legislature and governor, and did not consider the testimony of state prison officials that the program was beneficial and that the state received much more value than it paid for. (Iowa Department of Corrections)

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

Campbell v. *Clarke*, 481 F.3d 967 (7th Cir. 2007). A prisoner sought leave to proceed in forma pauperis in an action against prison officials, alleging deprivation of access to legal materials. The district court dismissed the case and the prisoner appealed. The court of appeals affirmed, finding that the prisoner was barred from proceeding in forma pauperis under the Prison Litigation Reform Act (PLRA), until all the fees for all of the prisoner's past and pending litigation have been paid in full. The prisoner alleged that the jail violates the Constitution because it provides computer-assisted legal research rather than a library of physical law books. The court noted that the prisoner had legal counsel in all criminal cases pending against him and that access to legal materials is required only for unrepresented litigants. (Milwaukee County Jail, Wisconsin)

U.S. District Court
DISPOSITION OF FUNDS
PLRA- Prison Litigation Reform Act

Samonte v. *Frank*, 517 F.Supp.2d 1238 (D.Hawai'i 2007). A prisoner, who had filed several civil rights actions, moved to have funds withdrawn from his prison trust account sequentially, rather than simultaneously, to satisfy court orders granting him in forma pauperis (IFP) status and directing collection and payment of filing fees. The district court denied the motion. The court held that indigent prisoners are required to pay filing fees on a per case basis, rather than per prisoner basis, and that per case payments did not burden the prisoner's constitutional right of meaningful access to the courts. The court noted that the Prison Litigation Reform Act (PLRA) filing fee provision requiring indigent prisoners to make monthly payments of 20 percent of the preceding month's income should be applied by simultaneously collecting fees for all of a prisoner's outstanding cases, as long as a minimum of $10 remains in the prisoner's account. (Hawai'i)

U.S. Appeals Court
COST OF CONFINEMENT
FEES
DUE PROCESS

Sickles v. *Campbell County, Kentucky*, 501 F.3d 726 (6th Cir. 2007). Inmates, former inmates, and relatives and friends of inmates brought a § 1983 action against two counties, challenging methods used by the counties to collect fees imposed on prisoners for the cost of booking and incarceration. The district court entered summary judgment for the counties and the plaintiffs appealed. The appeals court affirmed. The court held that the county was not required under the Due Process Clause to grant a predeprivation hearing to inmates prior to withholding a portion of money from their canteen accounts to pay the costs of booking, room, and board. The court found that the relatives lacked a property interest in the money they sent to inmates and that the counties did not violate the free speech rights of relatives of inmates in withholding money. According to the court, the county inmates had a property interest protected by the Due Process Clause in money withheld from their canteen accounts to pay the costs of booking, room, and board, but the county was not required under the Due Process Clause to grant a predeprivation hearing to inmates prior to withholding money from their canteen accounts where the amounts withheld were small, the risk of erroneous deprivation was minor in that withholding involved elementary accounting and was non-discretionary, the potential benefits of a hearing were small, and the government's interests of sharing costs and furthering offender accountability were substantial. The court also found that the county did not violate the free speech rights of relatives of inmates in withholding a portion of money that relatives had sent to the inmates for their canteen accounts, notwithstanding that if the money had not been withheld the inmates might have spent it making telephone calls. (Campbell County and Kenton County, Kentucky)

U.S. District Court
FEES

Smith v. *Federal Bureau of Prisons*, 517 F.Supp.2d 451 (D.D.C. 2007). A federal prisoner who had requested information from the Bureau of Prisons (BOP) several times under the Freedom of Information Act (FOIA) brought an action against the BOP, challenging the BOP's aggregation of the prisoner's FOIA requests and denial of his fee waiver request. The BOP brought a motion to dismiss or for summary judgment. The district court granted the motions. The court held that the prisoner was required to exhaust administrative remedies prior to seeking judicial review of BOP's aggregation of his FOIA requests, and that he was not entitled to a fee waiver. The court held that the prisoner was not entitled to a fee waiver for information he requested from the Bureau of Prisons (BOP) under the Freedom of Information Act (FOIA), where the prisoner did not specify the public interest that would allegedly be satisfied by disclosure of the requested information, identify the government activity or operation on which the prisoner intended to shed any light, or explain how disclosure would contribute to the public's understanding of such activity or operation, as required by Department of Justice (DOJ) procedures for disclosure of records under FOIA. (BOP FCI Gilmer, West Virginia)

U.S. District Court
RESTITUTION
APA- Administrative Procedures Act

Stern v. *Federal Bureau of Prisons*, 515 F.Supp.2d 153 (D.D.C. 2007). A federal inmate brought an action against the federal Bureau of Prisons (BOP) challenging its statutory authority to promulgate a regulation through which it had established restitution payment schedules. The BOP requested that the court transfer the suit to the federal district wherein the inmate was incarcerated. The district court denied the transfer, holding that the convenience of the parties and the interest of justice did not weigh in favor of the transfer of venue. According to the court, the federal inmate's Administrative Procedure Act (APA) action against the federal Bureau of Prisons (BOP) would not be construed as a petition for a writ of habeas corpus, so as to justify a transfer of venue from the District of Columbia to the district within which the inmate was incarcerated. The court noted that the success of the inmate's claim would not have affected the fact or length of the inmate's confinement, but would only invalidate the BOP's restitution schedule. (Federal Bureau of Prisons, Jesup, Georgia)

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)

U.S. District Court
DISPOSITION OF FUNDS

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 the 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 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 Department of Corrections)

2008

U.S. Appeals Court
DUE PROCESS
MEDICAL COSTS

Burns v. *PA Dept. of Correction*, 544 F.3d 279 (3rd Cir. 2008). An inmate brought a § 1983 due process claim against a state department of corrections and prison officials arising out of the prison's disciplinary proceedings. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded. The court held that as a matter of first impression, the department of corrections' assessment of the inmate's institutional account, even absent an attempt to deduct funds from it, constituted a deprivation of a protected property interest for the purposes of procedural due process. The court found that the Department of Corrections' voluntary promise to refrain from the future seizure of funds from the inmate's account, in a letter submitted more than three years after it originally assessed that account for medical and other fees, did not render the inmate's appeal of his procedural due process claim moot. The court noted that the alleged violation was complete at the moment the inmate was deprived of a property interest without being afforded the requisite process, and, if proven, would entitle the inmate to at least an award of nominal damages. The inmate had been disciplined for assaulting another inmate and he lost his prison job, good time credits, and was assessed for medical costs for the inmate who was injured. (SCI-Graterford, Pennsylvania Department of Corrections)

U.S. District Court
ATTORNEY FEES

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
INMATE FUNDS
PRISONER ACCOUNTS

Johnson v. *Ozmint*, 567 F.Supp.2d 806 (D.S.C. 2008). A state prison inmate brought a state court § 1983 action against the director of a state's department of corrections, alleging improper debiting of his trust account to pay for legal copies and postage, improper classification, improper conditions of confinement, and denial of rehabilitative opportunities. The director removed the action to federal court. The district court granted summary judgment for the director and remanded. The court held that the inmate's written requests to prison staff, and correspondence addressing issues of prison conditions, did not satisfy the Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement, so as to permit the inmate's § 1983 action involving the same prison conditions to go forward. The court held that the state corrections department's policy of debiting prison inmates' trust accounts to cover the cost of all legal correspondence did not infringe upon theinmate's right of access to courts under the Due Process Clause, where the inmate was not denied the use of a writing instrument, paper or postage for legal mail. The

court noted that the department had provided notice of its policy to debit accounts for the costs of such correspondence, the department had a compelling interest in maintaining an orderly assessment process, the inmate could contest any allegedly erroneous assessment via the prison grievance process, and the state offered an adequate post-deprivation remedy. (South Carolina Department of Corrections)

U.S. District Court
ATTORNEY FEES

Prison Legal News v. *Schwarzenegger*, 561 F.Supp.2d 1095 (N.D.Cal. 2008). In an action arising from a publisher's allegations that a state corrections department illegally censored its publications, the parties' settlement agreement provided that the publisher was the prevailing party for the purposes of a reasonable attorney fee award and costs. The publisher, Prison Legal News, had alleged that the California Department of Corrections and Rehabilitation (CDCR) illegally censored its publications. The publisher moved for a fee award for work performed by its counsel after the settlement agreement was executed, and for the establishment of a semi-annual fees process. The defendants opposed the motion. The district court granted the motion in part and denied in part. The court held that: (1) the allegedly minimal nature of work performed after the agreement was executed did not preclude the publisher from being the prevailing party entitled to the fee award; (2) the publisher could recover fees for time spent by its counsel on such activities as drafting press releases and responding to media inquiries; (3) clerical tasks could not be billed at the paralegal or attorney rate; (4) a reduction in the fee award was not warranted on grounds that the publisher had multiple attorneys in attendance at two telephone conferences; (5) a fee reduction was not warranted on grounds that the requested fees included hours spent on duplicative and excessive tasks; and (6) the establishment of a semi-annual fees process was not warranted. (California Department of Corrections and Rehabilitation)

U.S. District Court
DAMAGES

Smith v. *City of Oakland*, 538 F.Supp.2d 1217 (N.D.Cal. 2008). After a jury rendered a verdict in favor of a parolee and his girlfriend based on a finding that officers planted a semi-automatic rifle in his residence in order to frame him, the officers filed post-trial motions seeking to overturn the jury's verdict on both liability and damages. The district court held that substantial evidence supported the jury's verdict in favor of the parolee but that the $5 million dollar emotional distress award to the parolee was grossly excessive. According to the court, the emotional distress award to the parolee for malicious prosecution that resulted in 4 1/2 months imprisonment, the indignity of having to defend himself against trumped-up criminal charges and parole revocation proceedings, the uncertainty and apprehension about his fate and future caused by the false arrest, and loss of his house and relationship with his girlfriend was grossly excessive. The court granted a new trial on damages unless the parolee accepted a reduction from $5 million to $3 million. The court found that the parolee was not precluded from recovering damages that accrued after the indictment on his malicious prosecution claim against the police officers. The court noted that the parolee's testimony was corroborated by another witness, the lack of any fingerprints on the gun, expert's testimony about standard police procedures, the testimony of a parole agent that an inspection of the parolee's home was scheduled for that same day, the lack of any other guns or ammunition found in the search of the house, and inconsistencies in the officers' testimony. The court also found that the award of $750,000 to the parolee's girlfriend for emotional distress suffered when officers' conducted a suspicionless search of the parolee's residence while she was present was grossly excessive, and was subject to reduction to $300,000. (City of Oakland, California)

U.S. District Court
FINES
TELEPHONE

Stanko v. *Patton*, 568 F.Supp.2d 1061 (D.Neb. 2008). A pretrial detainee brought two actions against jail personnel alleging a number of constitutional violations. The district court granted summary judgment for the defendants. The court noted that the detainee "…is a white supremacist. He is also a prolific pro se litigator who makes a habit of suing jail and prison officials when he is charged with a crime. Those facts are central to understanding these related civil cases." The court held that there was no evidence that county jail officials charged the detainee more than the standard rate for telephone calls, as required to establish that the rates charged violated the detainee's right to equal access to the courts. The court held that a charge of $65 to the detainee's account by county jail officials, as discipline for ripping pages from or otherwise defacing several law books, did not violate due process, as the disciplinary procedures the detainee underwent provided him with all the process he was due and because he had additional remedies in state court if such procedures were insufficient. (Douglas County Correctional Center, Nebraska)

U.S. District Court
APA- Administrative Procedures Act
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. District Court
COST OF CONFINEMENT
DISPOSITION OF FUNDS

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. (Clinch County, Georgia)

U.S. District Court
MEDICAL COSTS

Campbell v. *Credit Bureau Systems, Inc*., 655 F.Supp.2d 732 (E.D.Ky. 2009). An inmate brought an action under the Fair Debt Collection Practices Act (FDCPA) against collection agencies, stemming from purported charges for medical care while incarcerated. The district court granted the defendants' motions for summary judgment. The court held that the inmate's certified letters to collection agencies, notifying them that he disputed the debt and requesting validation, did not entitle the inmate to protection under the Fair Debt Collection Practices Act (FDCPA) provision requiring agencies to temporarily cease collection efforts and assist debtors in understanding the source and nature of the debt, where the letters were not timely delivered. But the court held that the collection agencies failed to establish that the inmate initiated the action in bad faith or with nefarious motive, for the purposes of a fee request. (Federal Medical Center in Lexington, Kentucky)

U.S. Appeals Court
ATTORNEY FEES

Estate of Enoch ex rel. Enoch v. *Tienor*, 570 F.3d 821 (7th Cir. 2009). The estate and minor sisters of an 18-year-old female prisoner who committed suicide while on suicide watch at a correctional institution brought an action against correctional officers and staff, alleging violations of the prisoner's civil rights and seeking $5 million for the estate plus $5 million for the sisters. After accepting the defendants' offer of a judgment for $635,000, the plaintiffs filed a motion requesting $328,740 in attorney fees. The district court awarded $100,000 to the plaintiffs, with $1,500 to be taxed as fees for the guardian ad litem. The plaintiffs appealed. The appeals court reversed and remanded, holding that the fact that the case was settled for $635,000 did not warrant a reduction in the requested attorney fees. The court noted that $635,000 was not a nominal award, and the Farrar analysis for determining attorney fees, which considered the extent of relief compared to the relief sought, was not relevant in cases in which the recovery was not merely nominal. The court found that the district court did not abuse its discretion in awarding $1,500 in fees to the guardian ad litem. (Taycheedah Correctional Institution, Wisconsin)

U.S. Appeals Court
ATTORNEY FEES
DAMAGES

Kahle v. *Leonard*, 563 F.3d 736 (8th Cir. 2009). An individual who was raped by a trainee corrections officer while she was a pretrial detainee, brought a § 1983 action against the trainee corrections officer and other public officials and entities. After a jury found the trainee corrections officer liable and awarded damages, the district court granted the plaintiff's motion for attorneys' fees. The trainee corrections officer appealed. The appeals court affirmed in part and remanded in part. The court held that the district court did not abuse its discretion by admitting the plaintiff's psychologist's report as a supplemental report, and the district court's jury instructions did not constitute an abuse of discretion. The district court applied one percent of the detainee's $1.1 million judgment ($11,000) to attorneys' fees. With the detainee's legal expenses totaling $186,208.88, the defendant was responsible for $175,208.88 in attorneys' fees, in addition to the $1.1 million judgment. The appeals court did not affirm the award of only one percent and remanded the case for further proceedings. (Pennington County Jail, South Dakota)

U.S. Appeals Court
ATTORNEY FEES
COURT COSTS
PRETRIAL DETAINEE

King v. *Rivas*, 555 F.3d 14 (1st Cir. 2009). A pretrial detainee brought an action against corrections officers and others, alleging constitutional violations relating to a false accusation of threatening a guard. Prior to trial, the defendants made a package settlement offer, which was rejected by the detainee. Following the trial of one officer, a jury awarded the detainee damages in an amount less than the settlement offer. The parties moved for attorney's fees and costs. The district court granted the detainee's motion and denied the defendant's motion. The officer appealed. The appeals court vacated and remanded. The court held that the package settlement offer is to be taken on its own terms and compared with the total recovery package in determining whether a defendant is entitled to costs following the detainee's success at trial. The court held that the officer was entitled to costs, excluding attorney's fees, and that the detainee was entitled only to attorney's fees and costs accrued prior to the rejected offer. (Hillsborough House of Corrections, New Hampshire).

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

Merryfield v. *Jordan*, 584 F.3d 923 (10th Cir. 2009). A person who had been involuntarily committed to a state hospital brought an action against hospital officials, asserting a variety of claims relating to the conditions of his confinement and treatment, and seeking declaratory and injunctive relief. The district court dismissed the action and the committee appealed. He was granted permission to proceed in format pauperis (IFP) on appeal and ordered to make partial payments of the appellate filing fee through monthly payments from his institutional account. The appeals court held that, as a matter of first impression, the fee payment provisions of the Prison Litigation Reform Act (PLRA) applicable to prisoners did not apply to those who were civilly committed under the Kansas Sexually Violent Predator Act (KSVPA). (Sexual Predator Treatment Program, Larned State Hospital, Kansas)

U.S. District Court
INDIGENCY
MEDICAL COSTS

Vuncannon v. *U.S*., 650 F.Supp.2d 577 (N.D.Miss. 2009). A parolee brought an action against a county and others, alleging claims under § 1983 arising out of injuries he sustained in an accident while operating a forklift as part of a work release project. The court held that summary judgment for the county on the hospital's claim was precluded by a genuine issues of material fact as to (1) whether the parolee was a county prisoner, indigent, and unable to pay; (2) whether the parolee was in need of hospitalization for the entire length of time; and (3) whether the hospital's charges were reasonable and customary. (Shelby County Health Care Corporation, Tennessee, and Tippah County, Mississippi)

U.S. District Court
INMATE FUNDS
RESTITUTION

Bradshaw v. *Lappin*, 738 F.Supp.2d 1143 (D.Colo. 2010). Inmates of the Federal Bureau of Prisons (BOP) brought actions against various prison defendants, alleging that the Director of the BOP violated the inmates' rights, under the Inmate Financial Responsibility Program (IFRP), by requiring them to develop a financial plan addressing payment of their restitution obligations. The inmates moved to consolidate, and defendants moved for summary judgment. The district court consolidated the cases. The court held that allegations that prison officials improperly collected the sum of $25 per quarter from each trust account of the two inmates, which in turn was credited against a debt that it was undisputed the inmates actually owed, did not constitute a condition of confinement amounting to a "sufficiently serious" deprivation of minimal civilized measure of life's necessities, thereby precluding the inmates' Eighth Amendment claims. The court held that the officials were entitled to qualified immunity from the inmates' Bivens claims that they were improperly placed on Inmate Financial Responsibility Program (IFRP) "refusal" status, as it was not clear how, or even if, the inmates' constitutional rights would be implicated by being improperly placed on IFRP "refusal" status, and if placement did violate some constitutional right, that right was not so "clearly established" that officials could be expected to know their conduct violated the Constitution. The court noted that participation in IFRP was voluntary and both inmates voluntarily entered into written agreements to participate in the program, thereby expressly authorizing the Bureau of Prisons (BOP) to begin deducting funds from their accounts each quarter. (Federal Bureau of Prisons)

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

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. 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. (Federal Bureau of Prisons, Washington, D.C.)

U.S. Appeals Court
ATTORNEY FEES

Prison Legal News v. *Schwarzenegger*, 608 F.3d 446 (9th Cir. 2010). A nonprofit charitable organization that published a monthly magazine containing news and analysis relating to the legal rights of prisoners brought an action against state officials, in their individual and official capacities, seeking monetary, injunctive, and declaratory relief under § 1983 for violations of the First and Fourteenth Amendments. The organization challenged state institutions' refusal to deliver the organization's magazine to certain prisoners. After a settlement agreement was reached, the district court granted the organization's first motion for attorneys' fees and costs, and granted in part the organization's second motion for attorneys' fees and costs. State officials appealed. The appeals court affirmed in part, vacated in part, and remanded with instructions. The court held that the civil rights attorneys' fee statute authorized the organization, that prevailed in its § 1983 action against state officials by obtaining a legally enforceable settlement agreement relating to the delivery of its magazine to prisoners, to recover attorneys' fees for monitoring the state officials' compliance with the parties' settlement agreement. The appeals court held that the district court did not abuse its discretion by awarding fees for 31.5 hours of "correspondence with inmates" where without such correspondence it would have been difficult for the organization to discover or to document violations of the terms of the settlement. (California Department of Corrections and Rehabilitation)

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

Torres v. *O'Quinn*, 612 F.3d 237 (4th Cir. 2010). An inmate brought an action against state prison officials, complaining that the officials failed to repair a malfunctioning night-light in his prison cell, resulting in a disturbing strobe effect. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. The inmate appealed and the appeals court affirmed. The inmate then brought a separate action against prison officials, alleging a constitutional violation due to the prison's prohibition of his subscription to commercially available pictures of nude women. The district court dismissed the action for failure to state a claim upon which relief could be granted, the inmate appealed, and the appeals court dismissed the appeal. The inmate then moved for a partial refund of filing fees that had been collected from his prison trust account, challenging the prison's practice of withholding 40 percent of his account to satisfy the filing fee requirement for his two appeals. The appeals court found that PLRA required that no more than 20 percent of an inmate's monthly income be deducted to pay filing fees, irrespective of the total number of cases or appeals the inmate had pending at any one time. The

court held that granting the inmate a partial refund of fees was not warranted since the amounts withheld from the inmate's account were actually owed and were properly, if excessively, collected. (Red Onion State Prison, Virginia)

U.S. Appeals Court
DISPOSITION OF FUNDS
PRISONER ACCOUNTS

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
PRISONER ACCOUNTS
DISPOSITION OF FUNDS

English v. *District of Columbia*, 815 F.Supp.2d 254 (D.D.C. 2011). An involuntarily committed psychiatric patient brought an action against the District of Columbia, the mayor and various other officials, alleging constitutional claims pursuant to § 1983, and various violations of District of Columbia law. The defendants filed a motion to dismiss and the district court granted the motion. The court held that the process received by the patient at a public institution in regards to removal of money from his patient account was sufficient to satisfy Fifth Amendment procedural due process. The court noted that the patient received a pre-deprivation notice reasonably calculated to make him aware that he owed money and that this money would be taken from his account, the patient followed the procedures listed on the notice to challenge the invoice and availed himself of the appeals process, he received a response, and he requested and received an external review. (Saint Elizabeths, District of Columbia Department of Mental Health)

U.S. District Court
INMATE FUNDS
COST OF CONFINEMENT

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. Appeals Court
INMATE FUNDS
DUE PROCESS

Norris v. *Premier Integrity Solutions, Inc*., 641 F.3d 695 (6th Cir. 2011). An inmate brought a § 1983 due process claim against a state department of corrections and prison officials arising out of the prison's disciplinary proceedings. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court affirmed in part and reversed in part. The court held that a hearing officer's reliance entirely on the statements of a corrections officer, in determining whether videotape evidence was relevant in a prison disciplinary proceeding, deprived the inmate of his right to due process. According to the court, the inmate's right to present evidence was completely undermined by the hearing officer's failure to independently determine whether the evidence was relevant. But the court held that the hearing officer's denial of the inmate's request to call an alleged victim of the assault by the inmate as a witness in the disciplinary hearing did not deprive the inmate of his right to due process. The court noted that the hearing officer had asked the witness to testify, but the witness had refused, and the interest in protecting the witness and managing the difficult relationships within the prison setting far outweighed the inmate's right to call the alleged victim as a witness. The court found that a reasonable official at the time of the inmate's misconduct hearing would not have known that the inmate was entitled to due process with respect to an assessment against his prison account, and thus the hearing officer was entitled to qualified immunity from the inmate's § 1983 claim that the officer violated his due process rights by imposing an assessment prior to a hearing to determine the amount of money to be deducted from the inmate's prison account. (State Correctional Institute at Graterford, Pennsylvania)

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

Shepherd v. *Goord*, 662 F.3d 603 (2nd Cir. 2011). A state prisoner brought a § 1983 action against prison officials and related defendants for alleged violations of his First Amendment right to free exercise of religion, as well as his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment upon a jury verdict for the prisoner against two of defendants. The prisoner moved for post-trial relief. The district court awarded attorney fees in the amount of $1.50. The prisoner

appealed. The appeals court affirmed. The court held that the Prison Litigation Reform Act's (PLRA) attorney fee cap of 150% of the "monetary judgment" applied to limit the attorney fee award to $1.50, where the jury had awarded the prisoner monetary relief of only $1.00 in actual damages. (Elmira Correctional Facility, Hew York)

U.S. Appeals Court
COMMISSARY
DUE PROCESS

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)

2012

U.S. Appeals Court
ATTORNEY FEES
COURT COSTS
PLRA- Prison Litigation Reform Act

Balla v. *Idaho*, 677 F.3d 910 (9th Cir. 2012). Following completion of litigation against the State of Idaho and the state Department of Corrections, on state inmates' motion for clarification and motion for contempt for failure to comply with an injunction in state inmates' class action challenging conditions of confinement in an Idaho jail, the inmates' attorneys sought fees and costs. The district court awarded costs and fees, and denied the State's motion to stay pending appeal. The state appealed. The appeals court affirmed, finding that the award of attorney fees was warranted. The court found that the award of fees to the law firm appointed to represent the class of state inmates was warranted under the Prison Litigation Reform Act (PLRA), although the inmates' motion for an order to show cause why the State of Idaho and the Department of Corrections should not be held in contempt for violating the injunction was denied because the defendants had brought themselves into conformity with the injunction between the time the motion was filed and the time it was heard, and because the State did not intentionally violate the injunction. The court noted that the object of the motion was to obtain compliance, and counsel's monitoring efforts, including the denied motion, played a key role in resolving the overcrowding issue at the prison. The court awarded a slightly reduced amount: $76,185.60 in attorney's fees, $1,249.20 in costs and $46.94 in postage and office supply costs for the class representative. (Idaho State Correctional Institution)

U.S. District Court
COURT COSTS
DUE PROCESS
FINES
INDIGENCY

De Luna v. *Hidalgo County, Tex*., 853 F.Supp.2d 623(S.D.Tex. 2012). Two students, on behalf of themselves and a purported class, brought a § 1983 action against state magistrates and a county, alleging violation of federal due process and equal protection rights based on their placement in jail for unpaid fines or costs related to violations of the Texas Education Code. The parties filed cross-motions for summary judgment and the students also moved for class certification. The district court held that: (1) the students lacked standing to seek equitable and declaratory relief from magistrates' practice of incarcerating individuals without an indigency determination; (2) the county's policy of jailing individuals charged with fine-only misdemeanor offenses who had failed to directly inform the arraigning magistrate of their indigency violated due process; and (3) the students did not waive their right to an affirmative indigency determination by waiving their right to counsel at arraignment. The court held that summary judgment was precluded on the § 1983 claim by a genuine issue of material fact existed as to whether one of the students placed in jail for unpaid fines or costs related to violations of Texas Education Code knew that she could tell a state magistrate that she could not pay the fines on her outstanding charges and obtain either a payment plan or community service. (Hidalgo County Jail, Texas)

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

Ford v. *Bender*, 903 F.Supp.2d 90 (D.Mass. 2012). A law firm, which had been appointed to represent a pretrial detainee in a § 1983 action challenging the constitutionality of a state correctional facility's restrictive detention of the detainee in a disciplinary unit without a hearing, filed a motion for attorney fees and a bill of costs, after the detainee was awarded $47,500 in damages and injunctive relief at a jury-waived trial. The district court allowed the motion in part. The court held that: (1) the Prison Litigation Reform Act's (PLRA) cap on defendants' liability for attorney fees was not applicable; (2) one dollar of the monetary judgment would be applied to attorney fee award; (3) the maximum hourly rate available under PLRA to court-appointed counsel was 150 percent of the hourly rate authorized by the Judicial Conference; (4) a 45 percent reduction of the law firm's proposed hours, to account for duplication of work, was appropriate; and (5) an attorney fee award of $258,000 was appropriate. The law firm had sought $345,542 in fees, and costs in the amount of $20,456. (Department Disciplinary Unit, MCI–Cedar Junction, Massachusetts)

U.S. Appeals Court
SOCIAL SECURITY

Fowlkes v. *Thomas*, 667 F.3d 270 (2nd Cir. 2012). A state prisoner, whose supplemental security income (SSI) benefits were suspended while incarcerated, brought a pro se civil rights action against Social Security Administration officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and remanded in part. On remand, the district court refused to provide any relief to the prisoner and the prisoner appealed. The appeals court affirmed, finding that the Social Security Administration was barred by the "No Social Security Benefits for Prisoners Act" from tendering payment to the state prisoner while he remained incarcerated, even though the underlying obligation to pay benefits arose before the Act's enactment. According to the court, the Act was not impermissibly retroactive because it only altered the procedure and timing by which certain individuals received their retroactive social security benefit payments, but it did not affect their substantive right to those benefits. (Social Security Admin., New York)

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

Jimenez v. *Franklin*, 680 F.3d 1096 (9th Cir. 2012). Pretrial detainee filed a civil rights action against a deputy sheriff alleging use of excessive force to restrain him on three occasions while he was in pretrial detention. The defendants were found to have violated the plaintiff's civil rights and held liable for damages, and the district court awarded attorney's fees and ordered that all defendants were jointly and severally liable for the fees. The district granted satisfactions of judgment after the defendants paid less than the full amount of fee award. The plaintiff appealed. The appeals court vacated the district court's judgment. The court held that the proper time to challenge the joint and several nature of an attorney's fee award as violating PLRA was on appeal of order which included the fee award and provided that the defendants were jointly and severally liable for it. (Los Angeles County Sheriff, California)

U.S. Appeals Court
INMATE FUNDS

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
ATTORNEY FEES
DUE PROCESS
PLRA- Prison Litigation Reform Act

Pierce v. *County of Orange*, 905 F.Supp.2d 1017 (C.D.Cal. 2012). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff, seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims, and the detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, following a bench trial, the district court entered a final judgment and a permanent injunction, and the detainees renewed their motion for attorney fees. The district court granted the motion. The court held that: (1) attorneys were entitled to compensation for time spent taking calls from inmates and performing pre-trial preparation; (2) time spent unsuccessfully opposing a motion for sanctions was not compensable as part of fee award; (3) a 50%/50% split between pre-appeal constitutional claims and Americans with Disabilities Act (ADA) claims was appropriate; (4) reduction in the fee award in the amount of 30% was warranted based on the detainees' limited success on their constitutional claims; and (5) application of a multiplier to the lodestar calculations, under the provisions of the Prison Litigation Reform Act (PLRA) was not warranted. The case began in 2001, a class of pre-trial detainees in the Orange County, California, jails, filed a lawsuit against the County under 42 U.S.C. § 1983 for violations of their Fourteenth Amendment due process rights for the County's operation of the County jails in an unconstitutional manner. Allegations included depriving detainees of opportunities for exercise and restricting their ability to practice religion. (Orange County, California)

U.S. Appeals Court
COPAYMENT
MEDICAL COSTS

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
DISPOSITION OF FUNDS
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. District Court
RESTITUTION

U.S. v. *Rush*, 853 F.Supp.2d 159 (D.D.C. 2012). A defendant convicted of converting $104,000 of U.S. Marshals Service (USMS) to her own personal use moved to amend a judgment to set her monthly payments under the Bureau of Prisons' (BOP) Inmate Financial Responsibility Program (IFRP) to the minimum amount allowable. The court held that modification of the was not warranted, where the court's judgment did not require the defendant to participate in BOP's IFRP at all. The court noted that the amount that the inmate had to pay under IFRP was a matter entrusted to the Executive Branch, and thus the district court that ordered the defendant to pay restitution lacked the authority to set the defendant's monthly payments under IFRP at the minimum amount allowable. (Federal Prison Camp, Alderson, West Virginia)

U.S. District Court
MEDICAL COSTS
COPAYMENT

Weeks v. *Hodges*, 871 F.Supp.2d 811 (N.D.Ind. 2012). An inmate brought an action against a county sheriff and a jail commander, in their individual and official capacities, alleging under § 1983 that the defendants violated his Eighth Amendment rights in connection with his dental treatment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact existed as to whether the county sheriff and/or the jail administrator acted with deliberate indifference to the inmate's serious dental needs when they took no action to follow through on the jail dentist's diagnosis that the inmate needed to have his wisdom tooth removed, when it became clear that neither the inmate nor his mother were going to pay for the procedure. According to the court, there was no evidence that the county jail had a widespread practice of refusing inmates medical or dental care unless the inmates could pay for it themselves, as would support the inmate's § 1983 Eighth Amendment claim against the municipality arising from his allegedly deficient dental care. (Whitley County Jail, Indiana)

2013

U.S. District Court
ATTORNEY FEES

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
FEES
RECOUPMENT

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
MEDICAL COSTS

Foster v. *Ghosh*, 4 F.Supp.3d 974 (N.D.Ill. 2013). A state inmate brought an action against Illinois Department of Corrections officials and an optometrist who treated him in prison, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment. The inmate moved for a preliminary injunction requiring the defendants to grant him access to an ophthalmologist to evaluate his cataracts. The district court granted the motion. The court held that the optometrist and medical director were deliberately indifferent to the inmate's serious medical needs and that the inmate would suffer irreparable harm absent the issuance of an injunction. According to the court, the only treatment the inmate received in prison was a prescription for eyeglasses, which was not effective, and the inmate's request for a consultation was not expensive, unconventional, or esoteric. The court noted that the cost the defendants would bear providing adequate care to the inmate did not outweigh the irreparable harm the inmate would endure if his cataracts remained unevaluated. (Stateville Correctional Center, Illinois)

U.S. District Court
ATTORNEY FEES
DAMAGES

Hilton v. *Wright*, 928 F.Supp.2d 530 (N.D.N.Y. 2013). A state prison inmate infected with the Hepatitis C virus (HCV) brought a class action against the New York State Department of Correctional Services and Community Supervision (DOCCS) and its chief medical officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving injunctive and equitable claims. The defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. On remand, the district court held that: (1) the Eleventh Amendment barred an Eighth Amendment claim against an officer in his official capacity; (2)

the inmate waived the Eighth Amendment claim based on initial denial of treatment due to his short prison term; (3) a fact issue precluded summary judgment on the Eighth Amendment claim based on denial of treatment due to the inmate's failure to complete a substance abuse program;(4) a fact issue precluded summary judgment on the ADA and Rehabilitation Act claims; and (5) enlargement of the cap set forth in the agreement was appropriate. (New York State Department of Correctional Services and Community Supervision)

U.S. Appeals Court
ATTORNEY FEES
COURT COSTS
DAMAGES
DUE PROCESS

Jones v. *McDaniel*, 717 F.3d 1062 (9th Cir. 2013). A state prisoner filed a civil rights action against prison officials, alleging violations of his First and Fourteenth Amendment rights. The district court granted summary judgment in part for the prisoner. The parties entered into a settlement agreement after a jury verdict in the prisoner's favor. The prisoner appealed. The appeals court dismissed the appeal, holding that the prisoner could not appeal the district court's grant of partial summary judgment after entry of a judgment in favor of the prisoner on his due process claim. The officials had agreed, among other things, to withdraw all post-trial motions, to pay the prisoner $11,000 in punitive damages plus costs and attorney's fees, and to expunge all records of an improper disciplinary charge. (Ely State Prison, Nevada)

U.S. Appeals Court
MEDICAL COSTS
RECOUPMENT

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. Appeals Court
ATTORNEY FEES
LIMITATION
PLRA-Prison Litigation Reform Act

Woods v. *Carey*, 722 F.3d 1177 (9th Cir. 2013). After a state prisoner prevailed in his civil rights action against prison officials for deliberate indifference to his medical needs due to improper denial of two grievance forms seeking dental care, and obtained an award of $1500 in compensatory damages and $1000 in punitive damages, he moved for an award of attorney fees incurred in defending the favorable judgment on appeal. The district court awarded the fees. One defendant appealed, arguing that the fees award was limited by the Prison Litigation Reform Act (PLRA). The district court held that, in a matter of apparent first impression, the Prison Litigation Reform Act (PLRA) attorney fees cap did not apply to fees incurred by the prisoner in successfully defending the judgment on appeal. (California State Prison, Solano)

2014

U.S. Appeals Court
MEDICAL COSTS

Baker County Medical Services, Inc. v. *U.S. Atty. Gen*., 763 F.3d 1274 (11th Cir. 2014). A hospital commenced an action against various federal agencies and officials, seeking declaratory judgment that a statute imposing Medicare rate as full compensation for medical services rendered to federal detainees was an unconstitutional taking as applied to it. The district court dismissed the action. The hospital appealed. The appeals court affirmed. The court held that requiring the hospital to treat federal detainees at a Medicare rate on the basis that it had opted into the Medicare and Emergency Medical Treatment and Active Labor Act (EMTALA) was not a taking. (Baker County Medical Services, d.b.a. Ed Fraser Memorial Hospital, Florida)

U.S. District Court
COURT COSTS
FEES
INMATE FUNDS

Edmondson v. *Fremgen*, 17 F.Supp.3d 833 (E.D.Wis. 2014). An indigent prisoner brought a § 1983 action against the clerk of the state courts of appeals, alleging that the clerk violated various of his civil rights when she froze his inmate trust accounts until filing fees had been paid in two of his state appeals. The clerk moved to dismiss, and the prisoner moved for appointment of counsel. The district court granted the motion to dismiss and denied the motion to appoint counsel. The court held that freezing the prisoner's trust accounts did not violate his right to access the courts, did not violate the prisoner's right to procedural due process, and was not an illegal seizure. . According to the court, the indigent prisoner's right to access the courts were not violated, although not having the ability to spend money in his accounts prevented him from copying legal materials, where allowing the prisoner's appeals to proceed in the first place, by having deductions for filing fees made from his inmate trust accounts, did not injure his ability to access the courts. (Wisconsin)

U.S. District Court
ATTORNEY FEES
PREVAILING PARTY

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
ATTORNEY FEES

Kelly v. *Wengler*, 7 F.Supp.3d 1069 (D.Idaho 2014). State inmates filed a class action against a warden and the contractor that operated a state correctional center, alleging that the level of violence at the center violated their constitutional rights. After the parties entered into a settlement agreement the court found the operator to be in contempt and ordered relief. The inmates moved for attorney fees and costs. The district court granted the motions. The court held that the settlement offer made in the contempt proceeding, by the contractor that operated the state correctional facility, which provided an extension of the settlement agreement, required a specific independent monitor to review staffing for the remainder of the settlement agreement term, and offered to pay reasonable attorney fees, did not give the inmates the same relief that they achieved in the contempt proceeding, and thus the inmates' rejection of the offer did not preclude them from recovering attorney fees and costs they incurred in the contempt proceeding. The court noted that the inmates were already entitled to reasonable attorney fees in the event of a breach, and the inmates achieved greater relief in the contempt proceeding with regard to the extension and the addition of an independent monitor. After considering the totality of the record and the arguments by counsel, the court awarded the plaintiffs' counsel $349,018.52 in fees and costs. (Idaho Correctional Center, Corrections Corporation of America)

U.S. Appeals Court
COURT COSTS
INMATE FUNDS
DISPOSITION FUNDS

Montanez v. *Secretary Pennsylvania Dept. of Corrections*, 773 F.3d 472 (3rd Cir. 2014). Inmates brought a § 1983 action against Pennsylvania Department of Corrections (DOC) officials, alleging that the DOC's implementation of a policy that allowed automatic deduction of funds from their inmate accounts to cover court-ordered restitution, fines, and costs violated their procedural due process rights. The district court granted the officials' motion for summary judgment. The inmates appealed. The appeals court affirmed in part and reversed in part. The court held that the DOC's refusal to provide exceptions to its across-the-board 20% rate of deduction, pursuant to a DOC policy that allowed automatic deduction of funds from inmate accounts to cover court-ordered restitution, fines, and costs, did not violate due process, in light of the fact that the DOC would not make deductions when an inmate's account fell below a certain minimum. The court found that summary judgment was precluded by a genuine issue of material fact regarding the extent of the notice the inmate received with respect to his sentence and the DOC policy that permitted automatic deduction of funds from his inmate account to cover court-ordered restitution, fines, and costs. (Pennsylvania Department of Corrections)

U.S. Appeals Court
MEDICAL COSTS

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
FEES

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. District Court
MEDICAL COSTS

Scott v. *Clarke*, 61 F.Supp.3d 569 (W.D.Va. 2014). Female inmates brought a § 1983 action alleging that a correctional facility failed to provide adequate medical care and that Commonwealth of Virginia Department of Corrections (VDOC) officials were deliberately indifferent to that failure, in violation of the inmates' Eighth Amendment rights. The inmates moved for class certification. The district court held that class certification was warranted under the subsection of the class action rule pertaining to cases where predominantly injunctive or declaratory relief was appropriate. The court found that the proposed class of approximately 1,200 female inmates housed at the state correctional facility who were subject to its medical care system was sufficiently large, on its face, to satisfy the size requirement for class certification, and that the "commonality" requirement for class certification was met. The court noted that one of the questions of fact was whether the VDOC medical contract system permitted improper cost considerations to interfere with the treatment of serious medical conditions. (Fluvanna Correctional Center for Women, Virginia)

U.S. District Court
MEDICAL COSTS

Sherley v. *Thompson*, 69 F.Supp.3d 656 (W.D.Ky. 2014). A state prisoner filed a pro se § 1983 action against the Commissioner of the Kentucky Department of Corrections (DOC), a prison warden, and other prison officials, alleging that his conditions of confinement violated his Eighth Amendment rights, that he was deprived of medical treatment in violation of the Eighth Amendment, and was subjected to race discrimination in violation of the Equal Protection Clause. The district court dismissed the case, in part. The court held that the prisoner stated claims against the warden and prison administrators for violation of his equal protection rights and his conditions of confinement. According to the court, the prisoner stated an Eighth Amendment claim against one prison nurse by alleging that the nurse failed to provide him with appropriate medical treatment for ant bites he sustained, due to his inability to pay for treatment. The prisoner alleged that the prison had a policy or custom of segregating blacks and non-blacks, and that prison officials refused to place him in a non-black cell to get away from pests in his cell. The court held that the administrators allowed ants to infest his cell for weeks and that as a result, he received ant bites that caused him to scratch until his skin was broken due to severe itching, in violation of his conditions of confinement rights under § 1983 and the Eighth Amendment. (Little Sandy Correctional Complex, Green River Correctional Complex, Kentucky)

2015

U.S. Appeals Court
COMMISSARY

DeBrew v. *Atwood*, 792 F.3d 118 (D.C. Cir. 2015). A federal inmate brought an action alleging that the Bureau of Prison's (BOP) response to his request for documents violated the Freedom of Information Act (FOIA), that the BOP and its officials violated the Takings and Due Process Clauses by retaining interest earned on money in inmates' deposit accounts, and that officials violated the Eighth Amendment by charging excessively high prices for items sold by the prison commissary and for telephone calls. The district court entered summary judgment in the BOP's favor and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the BOP did not violate FOIA by failing to produce recordings of the inmate's telephone conversations and that the inmate's failure to exhaust his administrative remedies precluded the court from reviewing whether the BOP conducted an adequate search. The court found that the Bureau of Prisons' (BOP) alleged practice of charging excessively high prices for items sold by prison commissary and for telephone calls did not violate Eighth Amendment. (Federal Bureau of Prisons, Washington, D.C.)

U.S. District Court
MEDICAL COSTS
FEES
COPAYMENT

Gannaway v. *Prime Care Medical, Inc*., 150 F.Supp.3d 511 (E.D. Pa. 2015). A state inmate brought § 1983 action against Pennsylvania Department of Corrections (DOC) employees, private companies and healthcare professionals contracted to provide medical services to DOC institutions, alleging that he received inadequate medical treatment throughout his incarceration, in violation of the Eighth Amendment, and that he was retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motions. The court held that private physicians employed by the vendor which contracted to provide medical services to state inmates were acting under the color of state law for the purposes of inmate's § 1983 claim that he received inadequate medical treatment in connection with an "internal stitch" from prior surgery, in violation of the Eighth Amendment. The court noted that the physicians consistently provided the inmate with medical care throughout his incarceration, and there was no indication that the physicians were aware of, or acquiesced in, the inmate's alleged deprivation of food while in a restricted housing unit (RHU). The court found that the medical providers were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, where the inmate received extensive medical treatment while in DOC custody, including regular medical visits, prescriptions for medication to treat pain, acid reflux, high blood pressure, and constipation, and various diagnostic testing.

The court found that there was no evidence that charges for medical co-payments and medications, which were required by DOC policy, rendered the inmate unable to obtain treatment for his purported serious medical needs, as would support his § 1983 Eighth Amendment deliberate indifference claim. (Pennsylvania State Correctional Institution (SCI) at Rockview, and Prime Care Medical).

U.S. District Court
SOCIAL SECURITY

Mackey v. *United States*, 79 F.Supp.3d 57 (D.D.C. 2015). An inmate incarcerated in Indiana sought a court order directing the Commissioner of Social Security to pay benefits for a period prior to his incarceration. The Commissioner filed a motion to dismiss for improper venue. The inmate in turn requested transfer to another venue, rather than dismissal. The court granted the motion to dismiss the case, holding that transfer to a federal court in Indiana, where the inmate was incarcerated, was not in the interests of justice. (Federal Correctional Facility, Terre Haute, Indiana)

U.S. District Court
DUE PROCESS
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)

U.S. District Court
TELEPHONE

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
ATTORNEY FEES

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. Appeals Court
COST OF CONFINEMENT
INMATE FUNDS

Shinault v. *Hawks*, 782 F.3d 1053 (9th Cir. 2015). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights when they froze funds in his inmate trust account to recover the cost of his incarceration. The district court entered summary judgment in the officials' favor and the inmate appealed. The appeals court affirmed, holding that the decision to freeze and withdraw funds from the inmate's trust account did not violate the Eighth Amendment. According to the court, the inmate's interest in the funds was substantial and there was risk of an erroneous deprivation, but the officials were entitled to qualified immunity because it was not clearly established that state prison officials were required by the Due Process Clause to provide a pre-deprivation hearing before freezing funds in an inmate's trust account. The Department of Corrections transferred $65,353 into an account in the inmate's name and the inmate did not have access to the fund. (Oregon Department of Corrections)

U.S. Appeals Court
COURT COSTS
PLRA- Prison Litigation Reform Act
INMATE FUNDS

Siluk v. *Merwin*, 783 F.3d 421 (3rd Cir. 2015). An indigent state prisoner who had been allowed to file in forma pauperis commenced an action alleging that the director of a county domestic relations section deprived him of his federal income tax refund, in violation of the Fourteenth Amendment. The district court dismissed the prisoner's complaint, and ordered collection of an initial partial filing fee, followed by monthly installments. The prisoner appealed. The appeals court held that under the Prison Litigation Reform Act (PLRA), monthly income of an indigent state prisoner who owed two separate court fees was subject to a single monthly 20% deduction. (State Correctional Institution, Rockview, Pennsylvania, and Perry County Domestic Relations Section)

SECTION 5: ATTORNEY FEES

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
ATTORNEY FEES

Dillard v. Pitchess, 399 F.Supp. 1225 (C.D. Calif. 1975). Plaintiffs awarded reasonable attorney's fees for civil rights action challenging conditions under which pretrial detainees are confined. (Los Angeles County Jail, California)

U.S. District Court
DETERMINATION

Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), aff'd, 563 F.2d 741 (5th Cir. 1977). In determining the amount of reasonable attorneys fees to be awarded in a prisoners' rights case, the court should consider: the time and labor required; the novelty and difficulty of the questions; the skill required to perform the legal service properly; the preclusion of other employment by the attorney by accepting the case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by the client of the circumstance; the amount of fee involved and the results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the relationship with the client; and awards in similar cases.
(Duval County Jail, Florida)

1978

U.S. Supreme Court
ATTORNEY FEES

Hutto v. Finney, 437 U.S. 678 (1978), reh'g. denied, 439 U.S. 1122. Finding that conditions in the Arkansas prison system constitute cruel and unusual punishment in violation of the eighth and fourteenth amendments, a U.S. District Court issued a series of detailed remedial orders. Two aspects of that relief were challenged on appeal to the Eighth Circuit Court of Appeals: 1) an order placing a maximum limit of thirty days on punitive isolation and 2) an award of attorney's fees to be paid out of the Department of Corrections' funds, based on the lower court's finding that officials had acted in bad faith in failing to remedy identified problems. The Eighth Circuit affirmed and certiorari from the U.S. Supreme Court was sought by state officials. (Affirmed.) (Arkansas)

1979

U.S. Appeals Court
ATTORNEY FEES
PRO SE LITIGANTS
42 U.S.C.A.
Section 1988

Davis v. Parratt, 608 F.2d 717 (8th Cir. 1979). The Eighth Circuit Court of Appeals denied Cliff Davis' claim for attorney's fees with regard to his suit against several officers of the Nebraska Penal and Correctional Complex. Davis had won a suit against the institution when he alleged that the inmate legal library was inadequate and that inmates had been denied reasonable access to the library. Davis was awarded $351.65 as costs but was denied attorney's fees. He then filed suit alleging that he was entitled to attorney's fees because he is a trained paralegal and sought $1,190.95 in expenses. The Eighth Circuit noted that the legislative history of 42 U.S.C. Section 1988 reveals that its purpose is not to compensate pro se litigants for their expenses, but to provide counsel fees to prevailing parties in order to give private citizens a meaningful opportunity to vindicate their rights in court. The court held that the section presupposes a relationship of attorney and client. Since no such relationship was present in Davis' case, the court denied his request for attorney's fees. The court also ruled that the amount awarded to Davis in costs was fully within the discretion of the district court. (Penal and Correctional Complex, Nebraska)

U.S. Appeals Court
DETERMINATION

Furtado v. Bishop, 604 F.2d 80 (1st Cir. 1979), cert. denied, 444 U.S. 1035 (1979). Attorney's fees are not to be awarded on percentage-of-judgment basis. (Massachusetts Correctional Institution, Walpole, Massachusetts)

U.S. Supreme Court
ATTORNEY FEES

Hughes v. Rowe, 449 U.S. 5 (1980). The petitioner, a state prisoner who was placed in a segregation cell for a violation of prison regulations, was given a hearing two days later, and, after admitting the violation, was sentenced to 10 days segregation. After exhausting administrative remedies, the petitioner brought a federal-court civil rights action against Illinois corrections officers under 42 U.S.C. Section 1983.

Held. The award of attorney's fees entered against the petitioner was improper. The defendant in an action brought under Section 1983 may recover attorney's fees from the plaintiff only if the district court finds "that the plaintiff's action was frivolous, unreasonable, or without foundation," cf. Christiansburg Garment Co. v. EEOC, 434 U.S. 412. No such finding supported the fee award in this case, and the limitations apply with special force in an action, such as here, initiated by an uncounseled prisoner. Moreover, the fact that a prisoner's complaint, even when liberally construed, cannot survive a motion to dismiss does not, without more, entitle the defendant to attorney's fees.

Certiorari granted; affirmed in part, reversed in part, and remanded. (Illinois State Penitentiary)

U.S. Appeals Court
DETERMINATION

Leeds v. Watson, 630 F.2d 674 (9th Cir. 1980). The fact that the plaintiff's counsel are supported by tax funds is irrelevant in the determination of attorney's fees. (Kootenai County Jail, Idaho)

U.S. Supreme Court
ATTORNEY FEES
PREVAILING PARTY
42 U.S.C.A.
Section 1988

Maher v. Gagne, 448 U.S. 122 (1980). Gagne brought this 42 U.S.C. Section 1983 in a federal court alleging that the State of Connecticut's AFDC regulations denied her credit for substantial portions of her actual work related expenses resulting in a reduction in the level of her benefits. Gagne contended this violated the Social Security Act and the equal protection and due process clauses of the fourteenth amendment. The district court entered a consent decree providing for a substantial increase in allowances for work related expenses. Gagne was awarded attorney's fees under 42 U.S.C. Section 1988 on the basis that Gagne was entitled to the fees because in addition to her statutory claim, she alleged constitutional claims that were sufficiently substantial to support federal jurisdiction. The Second Circuit Court of Appeals affirmed, and state officials sought certiorari from the U.S. Supreme Court. The Supreme Court affirmed the circuit court decision.

HELD: On the basis of Maine v. Thiboutot, 100 U.S. 2502 (1980) the Court held that the award of attorney's fees in this case was proper, and continued, "The fact that [Gagne] prevailed through a settlement rather than through litigation does not weaken her claims to fees. Nothing in the language of Section 1988 conditions the district court's power to award fees on full litigation of the issues or on a judicial determination that the plaintiff's rights have been violated." 48 LW at 4893.

The Court rejected the state officials' argument that Gagne did not gain sufficient relief through the consent decree to be considered the prevailing party: "The district court's contrary finding was based on its familiarity with the progress of litigation through the pleading, discovery, and settlement negotiation stages. That finding was upheld by the court of appeals, and we see no reason to question its validity." 48 LW at 4893.

HELD: The Court rejected the state official's argument that the district court was barred by the eleventh amendment from awarding attorneys' fees against the state. Gagne alleged constitutional violations which both the district court and the court of appeals held to be sufficiently substantial to support federal jurisdiction, and the constitutional issues remained in the case until the consent decree was entered. 48 LW at 4894. Under these circumstances, the eleventh amendment claim is foreclosed by the decision in Hutto v. Finney, 437 U.S. 678 (1978) where it noted that the Court had never viewed the eleventh amendment as barring attorneys' fees awards, even in suits between states and individual litigants. Hutto v. Finney, 437 U.S. at 695.
Moreover, even if the eleventh amendment would otherwise present a barrier to an award of fees against a state, Congress was clearly acting within its powers under Section Five of the fourteenth amendment in removing that barrier. Under Section Five, Congress may pass any legislation that is appropriate to enforce the guarantees of the fourteenth amendment. A statute awarding attorneys' fees to a person who prevails in a wholly statutory, non-civil rights claim pendent to a substantial constitutional claim or in one in which both a statutory and substantial constitutional claim are settled favorably to the plaintiff without adjudication falls within the category of 'appropriate legislation.' 48 LW at 4894. (State of Connecticut)

U.S. Supreme Court
ATTORNEY FEES
PREVAILING PARTY
42 U.S.C.A.
Section 1988

Maine v. Thiboutot, 100 S.Ct. 2502 (1980). Following the exhaustion of state administrative remedies, Thiboutot seeks judicial review in a Maine Superior Court of the State of Maine's and the Commissioner of Human Services' denial of welfare benefits that Thiboutot contended his family was entitled to under the Federal Social Security Act, 42 U.S.C. Section 602 (2)(7). Thiboutot sought relief for himself and others similarly situated, under 42 U.S.C. Section 1983.

The superior court's judgment enjoined the state from enforcing the challenged rule, ordered the state to adopt new regulations, and to pay the correct amounts retroactively to Thiboutot, and prospectively to new class members. The court denied Thiboutot's motion for attorneys' fees. The Maine Supreme Court concluded while Thiboutot was not entitled to attorneys' fees under state law, he was eligible under 42 U.S.C. Section 1988, the Civil Rights Attorneys' Fee Award Act of 1976. State officials then sought certiorari from the U.S. Supreme Court. (Affirmed.)

ISSUE: Whether 42 U.S.C. Section 1983 encompasses claims based on purely statutory violations of federal law. HELD: Given that Congress attached no modifiers to the phrase, the plain language of the statute undoubtedly embraces [Thiboutot's] claim that [the state] violated the Social Security Act. Even were the language ambiguous, however, any doubt as to its meaning has been resolved by our several cases suggesting, explicitly or implicitly, that the Section 1983 remedy broadly encompasses violations of federal statutory as well as constitutional law. 48 LW at 4860.

ISSUE: Whether attorneys' fees under 42 U.S.C. Section 1988 may be awarded to a prevailing party in an action under 42 U.S.C. Section 1983 based purely on statutory violations of federal law. HELD: Once again ... the plain language [of 42 U.S.C. Section 1988] provides an answer. The statute states that fees are available in any Section 1983 action. Since we hold that this statutory action is properly brought under Section 1983, and since Section 1988 makes no exception for statutory Section 1983 actions, Section 1988 plainly applies to this suit. 48 LW at 4861. (Maine Department of Human Services)

U.S. Appeals Court
ATTORNEY FEES
POST-JUDGMENT SERVICES

Miller v. Carson, 628 F.2d 346 (5th Cir. 1980), aff'd, 515 F.Supp. 1375 (1981). A disputed award of over $11,000 in attorney's fees has been upheld in favor of the attorney representing inmates of the Duval County Jail (Florida). The award is significant in that it involved services rendered following the entry of judgment. The merits of the case, which involved the living conditions at the jail, were decided by entry of an injunction against jail officials in July, 1975. At that time, a stipulated amount was paid to the inmates' attorneys as compensation for fees and expenses.

In an effort to secure compliance with various aspects of the judgment order, additional services were subsequently performed by the inmates' attorneys. In most instances, no new relief was sought by the plaintiffs, and because compliance was usually obtained prior to the entry of any order, the bulk of the motions presented were subsequently denied or withdrawn.

The defendants argued that since these post-judgment matters did not result in positive court orders in the plaintiffs' favor, the plaintiffs were not the prevailing party. The defendants took special exception to expenses claimed for the testimony of a physician used to support an allegation of failure to comply with the court's order. Upon application for additional fees and compensation, the district court awarded $17,407.50.

Of that amount $5,925 represented compensation for services before the entry of the order. The remainder involved compensation for service costs and expenses following the entry of judgment. On appeal, the Fifth Circuit Court upheld the award. Finding that it was not an abuse of discretion, the court noted that a party need not necessarily obtain a judicial order to prove that he has prevailed. In this instance, the threat of the pending motion for contempt usually brought about the compliance sought by the plaintiffs. Since these motions were reasonably related to the claims upon which the plaintiffs achieved success, the court reasoned that in that sense the plaintiffs had prevailed. With respect to the fact that judgment had previously been entered, the court noted that post-judgment work is often required to obtain the relief sought. It stated that so long as such efforts "contributed to the vindication of plaintiffs' rights," the award was appropriate. (Duval County Jail, Florida)

U.S. District Court
PRO SE LITIGANT
42 U.S.C.A. Section 1988

Owens-El v. Robinson, 498 F.Supp. 877 (W.D. Penn. 1980), aff'd, 694 F.2d 941 (3rd Cir. 1982). A Pennsylvania district court has denied Kenneth Owens-El, a former inmate of the Allegheny County Jail, attorney's fees for representing himself in a civil rights action. Owens-El had filed suit on behalf of himself and other jail inmates for a declaratory judgment holding that the confinement conditions at the jail violated the constitutional rights of inmates. A six week nonjury trial resulted in a finding that in many areas, inmates had been deprived of their constitutional rights. Owens-El then filed a petition for attorney's fees based on 42 U.S.C. Section 1988. In reviewing his petition, the court noted that the legislative history of Section 1988 provides that its purpose is not to compensate pro se litigants, but to provide counsel fees to prevailing parties in order to give private citizens a meaningful opportunity to vindicate their rights. The court further stated that Section 1988 presupposes a relationship of attorney and client. A pro se prisoner cannot claim that he has foregone any income in his own business to pursue his civil rights claim. Davis v. Parratt, 608 F.2d 717 (8th Cir. 1979); Rheuark v. Shaw, 477 F.Supp. 897 (N.D. Tex. 1979). As such, the court denied Owens-El's request for attorney's fees. (Allegheny County Jail, Pennsylvania)

U.S. Appeals Court
DETERMINATION

Palmigiano v. Garrahy, 616 F.2d 598 (1st Cir. 1980), cert. denied, 449 U.S. 839 (1979). Fees are to be awarded on the basis of what the private bar would reasonably charge for a particular service, not what private interest attorneys were actually being paid. (Rhode Island Prison System)

U.S. Appeals Court
PREVAILING PARTY
DETERMINATION

Ruiz v. Estelle, 609 F.2d 118 (5th Cir. 1980). $1,600,000 in attorney fees are awarded. The U.S. District Court for the Southern District of Texas awarded over $1,600,000 in fees to the attorneys for prison inmates in this ten year old civil rights action challenging the constitutionality of conditions in the Texas prison system. After the Fifth Circuit appeals court partially affirmed relief granted to plaintiffs by the district court, the lower court found the inmates to be "prevailing parties" for purposes of 42 U.S.C. 1988, which provides for the award of "reasonable" attorney's fees in civil rights cases.

In determining what is reasonable in this case, the court used fees awarded in complex federal antitrust litigation as a reference point. In viewing the number of hours claimed by plaintiff's lawyers, the court looked at the time expended by opposing counsel and noted that even using "extremely conservative figures, the amount of time spent by the staff of the attorney general in one year approached the total amount of time claimed by plaintiffs' attorneys for work extending over an eight year period."

An order awarding attorney's fees upon the withdrawal of one attorney from the litigation prior to completion of the litigation is not a final appealable order. The court permits any consideration of the validity of such an award, noting only that the defendants are not harmed since it is clear that the funds are recoverable. (Department of Corrections, Texas)

1981

U.S. District Court
ATTORNEY FEES
42 U.S.C.A.
Section 1988

Kennelly v. Lemoi, 529 F.Supp. 140 (D.C. R.I., 1981). The plaintiffs, who obtained jury findings that state policemen had violated their civil rights, were entitled to recover $13,698 as attorney fees under 42 U.S.C.A. Section 1988. (State Police, Rhode Island)

U.S. District Court
42 U.S.C.A.
Section 1988
PREVAILING PARTY

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)

1982

U.S. Appeals Court
42 U.S.C.A.
Section 1988
PREVAILING PARTY

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." The court reasoned that if the suit had not been brought, the strip search policy would have remained the same. Because the objectives of the plaintiffs had been achieved by bringing suit, they were the "prevailing party" for purposes of Section 1988. (Arlington County Detention Facility, Virginia)

U.S. District Court
JAIL HOUSE
LAWYER
42 U.S.C.A.
SECTION 1988

Peniman v. Cartwright, 550 F.Supp. 1302 (S.D. Iowa 1982). "Jail house lawyer" is not entitled to Section 1988 attorney's fees. Upon considering this case, the district court discovered that the question of whether a jail house lawyer is entitled to attorney's fees under 42 U.S.C. Section 1988 had only been addressed in one published decision to the court's knowledge. In Grooms v. Snyder, 474 F.Supp. 380 (N.D. Ind. 1979), the court refused to award attorney's fees to an inmate with no legal training who represented another inmate. The federal district court in this case agreed with that holding.

The court found that the purpose of Section 1988, which allows for an award of attorney fees, is to enable the litigant to obtain the kind of competent legal counsel that is available to his opposition; awarding attorney fees for the services of a prisoner who has no formal legal training would not be consistent with that purpose. The court noted that the inmate did not have the rigorous education required of an attorney, and he was not bound by a code of ethics which could result in frivolous civil rights suits for the sake of his own personal status among the prisoner population. In seeking to discourage the practice of law without a license the court stated: "Such an award

would be contrary to the purpose and intent of the statute (Section 1988) and would also contravene public policy by blurring important distinction between the licensed practice of law and the untrained assistance of a 'jail house lawyer.'" (Iowa State Penitentiary)

U.S. Appeals Court
DETERMINATION

Ramos v. Lamm, 639 F.2d 559 (D.C. Colo. 1982), cert. denied, 450 U.S. 1041. In the protracted litigation arising out of prison conditions in Colorado, the plaintiffs attorneys were awarded, as part of their costs, attorney fees in the amount of $709,933. They were also awarded other costs of $32,782. The district judge wrote a lengthy opinion demonstrating the confusion of the current law of attorney fees, and why it was impossible for trial courts to render consistent opinions based on precedent. He also included descriptions of the attorneys in the case. Attorneys' fees of over $700,000 were awarded by the district court. In allowing the fees, the court held that attorneys fees could be awarded for the work of all attorneys, even if more than one was present when such work was performed, that attorneys traveling from out of state to the court could not recover their travel costs as attorneys fees, and photocopying, postage, telephone, book and secretarial expenses could not be recovered as attorneys fees. (State Penitentiary, Canon City, Colorado)

U.S. Appeals Court
DETERMINATION
PRO SE LITIGANT

Williams v. Thomas, 692 F.2d 1032 (1982), cert. denied, 103 S.Ct. 3115 (1982). Appeals court finds lower court award of fees is inadequate. The U.S. Court of Appeals for the Fifth Circuit has ruled that a district court abused its discretion by awarding only $2,500 in counsel fees to a lawyer appointed to represent an indigent plaintiff in connection with injuries inflicted on him while he was incarcerated at the Dallas County Jail. The court held that when lawyers are assigned to represent pro se applicants and "undertake their responsibilities vigorously, set aside their more remunerative practices, and champion the rights of the indigent in an effective, selfiness, and self-sacrificing manner, the district court should not impede the policies behind section 1988 by making an inadequate award of attorney's fees." While conceding that the plaintiff's monetary recovery was small ($500), the court noted that it is "difficult to place a monetary amount upon the benefit that the public receives when public officials are reminded that acts of unwarranted violence will not go unnoticed in the American system of justice." (Dallas County Jail, Dallas Texas)

U.S. Appeals Court
PRO SE LITIGANT
42 U.S.C.A.
Section 1988

Wright v. Crowell, 674 F.2d 521 (6th Cir. 1982). The Sixth Circuit Court of Appeals held that a plaintiff who acts as his own attorney and prevails is not entitled to attorney's fees under Section 1988, affirming the district court holding. (State Prison, Tennessee)

U.S. District Court
42 U.S.C.A.
Section 1988
CONSENT DECREE

Wuori v. Concannon, 551 F.Supp. 185 (D. Me. 1982). $78,000 is awarded to attorneys. Services of plaintiff's attorney devoted to reasonable monitoring of a consent decree are compensable under Civil Rights Attorney's Fees Award Act, as are services of counsel in obtaining the reappointment of a special master for an additional two year term to oversee the implementation of the decree. (Pineland Center, Maine)

1983

State Appeals Court
ATTORNEY FEES

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

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

U.S. Appeals Court
ATTORNEY FEES
42 U.S.C.A.
Section 1988

Palmigiano v. Garrahy, 707 F.2d 636 (1st Cir. 1983). Attorney fees are awarded to inmate's out-of-state attorneys. Attorneys representing a class of prisoners and pretrial detainees brought suit under 42 U.S.C. Section 1988 alleging that conditions of confinement in the Rhode Island prison system violated the eighth and fourteenth amendments. After a lengthy trial and a ruling in favor of the plaintiffs, the district court awarded attorney fees to the plaintiffs, including fees and certain trial costs, and also out-of-pocket costs incurred by the plaintiffs' attorneys, including transportation, lodging, parking, food and telephone expenses. The defendants appealed, seeking to limit the fees to the hourly compensation and court costs, hoping to eliminate the reimbursement for out-of-pocket expenses. (Rhode Island Prison System)

U.S. Supreme Court
POST-JUDGMENT
SERVICES

Rutherford v. Pitchess, 104 S.Ct. 3227 (1983). Supreme Court Finds That Good Faith Efforts of Defendant After Contempt Proceedings Were Initiated Should Not be Considered in Award of Attorney's Fees. The United States Supreme Court ruled that:

A defendant's good faith efforts to comply with an injunction after the initiation of contempt proceedings should not be considered in setting attorneys' fees for plaintiff's counsel where there were reasonable grounds for bringing the contempt proceedings and where the pendency of those proceedings had an impact on the defendant's compliance.

Prisoners at the Los Angeles County Jail had obtained a judgment requiring the county and jail officials to make certain constitutionally required improvements. More than one year later, they initiated contempt proceedings against the public officials for failing to comply with the judgment.

Although the district court did not hold the officials in contempt, it recognized that the initiation of contempt proceedings affected the subsequent good faith compliance efforts of the officials. The inmates filed a motion for attorneys' fees under 42 U.S.C. Section 1988 for services rendered during contempt proceedings. The district court awarded them $5,000, and they appealed. The district court justified awarding compensation for less than the time and efforts "reasonably and necessarily required for the proceedings" by citing the defendants' good faith efforts.

The Supreme Court noted that if this approach to determining fees were allowed, plaintiffs would have less incentive to monitor compliance with judgments that protect constitutional rights. Also, the rule adopted by the Court encourages defendants to comply with civil rights judgments to avoid major fee awards. The Court noted that the rule does not discourage compliance efforts after a contempt proceeding is initiated because such efforts would, as a practical matter, reduce the amount of time the plaintiff's counsel must spend presenting the case. (Los Angeles County Jail, California)

U.S. District Court
DETERMINATION
42 U.S.C.A.
Section 1988

Stanwood v. Green, 559 F.Supp. 196 (1983), aff'd, 774 F.2d 714. Attorney fee award is not lowered because of financial hardship on county. The federal district court for the State of Oregon has held that, even though an inmate's attorneys are not entitled to retroactive fees, financial difficulties faced by the defendant county cannot be considered for the purpose of reducing an award of attorney's fees.

Section 1988 was enacted in October of 1976 and authorized attorney's fees to the prevailing party in all civil rights actions pending under Section 1983 at that time. The Oregon Federal Court, however, held that this case was not pending on the date of enactment because a consent decree had been signed and filed several months before Section 1988 became effective, and no new action was taken in the case until over four years later. Refusing to grant fees retroactively, the court did determine that a reasonable attorney's fee in this matter for the work done on the order to show cause and subsequent negotiations was the sum of $134,444, along with $6,861 in expenses. The county defendants cited severe financial hardship and asked that the award be reduced. In response to this request the court noted that the Supreme Court has upheld attorney's fees awards even in cases where the plaintiff is financially incapable of paying the fees himself. If the financial condition of the plaintiff is irrelevant, then so too must the financial condition of the defendant. The court did agree to enter judgment for one half of the attorney's fees in one year and one half the following year to lessen the impact of the large award. (Coos County Jail, Oregon)

1984

U.S. District Court
PREVAILING PARTY
PARTIAL SUCCESS

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

U.S. Appeals Court
PREVAILING PARTY
42 U.S.C.A.
Section 1988

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

He 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.

The plaintiff 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)

1985

U.S. Appeals Court
PREVAILING PARTY
DETERMINATION

Clayton v. Thurman, 775 F.2d 1096 (1985). In an inmates' Section 1983 action challenging conditions of a city-county jail, the United States District Court awarded attorney fees in favor of the inmates, and the defendants appealed. The court of appeals held that: (1) inmates, who prevailed on many of their claims, were "prevailing parties," and (2) their attorneys were entitled to fees in total sum of $144,930.43.

The inmates, who were successful in many of their Section 1983 claims challenging conditions at city-county jail, including such areas as women's rights, medical care, prison security, recreational facilities, and religion, were "prevailing parties" for purposes of attorney fee award, even though they did not prevail on their claim seeking the building of a new jail.

In awarding attorney fees in civil rights action, the starting point for fixing a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.

The defendants in Section 1983 action were not entitled to a downward adjustment of attorney fees against them simply because the district court had amended its earlier injunctive order in certain particulars, where, even after amendment, the plaintiffs still enjoyed substantial victory in their action challenging jail conditions. (Tulsa County Jail, Oklahoma)

U.S. District Court
42 U.S.C.A.
Section 1988

Jones v. Mississippi Dept. of Corrections, 615 F.Supp. 456 (D.C. Miss. 1985). Two black prison guards brought a civil rights action claiming racial discrimination in the employment promotion practices. The district court held that: (1) the first guard's allegations were insufficient to establish a prima facie case of disparate treatment; (2) evidence with respect to the second guard was sufficient to establish a prima facie case of disparate impact under Title VII; and (3) evidence was insufficient to establish that an oral examination process for promotion of prison guards was job related for purposes of rebutting a prima facie case.

In a disparate treatment case involving allegations of discrimination in promotion practices, Title VII plaintiff must show the following: that he belongs to a group protected by the statute; he was qualified for the position to which he sought promotion; he was not promoted; and after his nonpromotion, the employer continued to seek applicants not in the plaintiff's protected class or promoted those having comparable or lesser qualifications, not in the plaintiff's protected class.

A black prison guard who brought unsuccessful action alleging discrimination in promotion employment practices was not required to pay defendants' attorneys' fees and expenses pursuant to 42 U.S.C.A. Section 1988, where the action was not frivolously brought.

Besides providing evidence of business necessity of examination process, and thereby validating it, the employer may attack the plaintiff's case based on allegation of disparate impact in the employment practice by showing that statistical proof is unacceptable. (Department of Corrections, Mississippi)

U.S. Appeals Court
PREVAILING PARTY

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

U.S. District Court
PREVAILING PARTY

Gillespie v. Brewer, 602 F.Supp 218 (N.D. W. Va. 1985). Plaintiff is prevailing party in spite of low damages obtained; attorneys fees awarded. Although the parties in this case had negotiated concerning an award of attorney fees while the case was being considered, the federal district court voided their agreement which waived the plaintiff's statutory right to attorney's fees, stating: "This court must conclude that any negotiation concerning attorney's fees during the settlement of merits is against public policy." Although the plaintiff had asked for $100,000 damages but received only $200, he was still the prevailing party according to the court. Attorney's fees were awarded. (State Penitentiary, Moundsville, West Virginia)

U.S. Supreme Court
PREVAILING PARTY
42 U.S.C.A.
Section 1988

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

Prevailing defendants generally are entitled to costs, but are entitled to fees only when the suit was vexatious, frivolous or brought to harass or embarrass the defendant.

Personal-capacity civil rights suits seek to impose personal liability on a government official for actions he takes under color of state law. In contrast, official-capacity suits generally represent only another way of pleading an action against the entity of which the officer is an agent. (State Police, Kentucky)

U.S. District Court
PREVAILING PARTY
DETERMINATION

Lightfoot v. Walker, 619 F.Supp. 1481 (D.C.Ill. 1985). Inmates, who had prevailed in a civil rights action challenging denials of medical care, applied for attorney's fees and costs pursuant to a statute which authorizes the award of attorney's fees to the prevailing plaintiff in a federal civil rights action. The district court held that: (1) the inmates were prevailing parties, for purposes of attorney's fees award; (2) the total lodestar figure, which represents a reasonable attorney fee award, was $605,243, based on reasonable hours expended of 3,070.5 hours for one attorney and 2,966.3 hours for another attorney, and reasonable attorney fee rates of $115 per hour for one attorney and $85 per hour for the other; but (3) the lodestar figure should not be enhanced based on exceptional success achieved and risk of nonpayment.

The "lodestar figure," which is used in award of attorney's fees to plaintiffs who prevail in federal civil rights action, pursuant to 42 Section 1988, is calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate.

In determining "lodestar figure" used in awarding fees to plaintiffs who prevail in federal civil rights actions pursuant to 42 U.S.C.A. Section 1988, the court should consider the time and labor required, novelty and difficulty of questions, skill requisite to perform the legal service properly, preclusion of employment by the attorney due to acceptance of the case, a customary fee, whether the fee is fixed or contingent, time limitations imposed by client or circumstances, amount involved and results obtained, experience, reputation, and ability of attorneys, "undesirability" of case, nature and length of professional relationship with client, and awards in similar cases. (Menard Correctional Center, Illinois)

U.S. District Court
PARTIAL SUCCESS
DETERMINATION

Morgan v. NV Bd. of State Prison Commissioners, 615 F.Supp. 882 (D.C.Nev. 1985). Fees were sought for the attorney and paralegal who represented prison inmates in their successful suit to maintain reasonable levels of legal supplies at the prison law library. The district court held that: (1) attorney fees were recoverable, but twenty-five percent of the total amount had to be reduced for unsuccessful results, and (2) paralegal fees similarly were recoverable.

This case involves the question of what figure is an appropriate hourly rate for paralegals. Additionally, even though the paralegal in this case was on parole, he was not considered a "jailhouse lawyer," but was an independent paralegal entitled to fees and costs. "Jailhouse lawyers" are not entitled to fee compensation under Section 1988.

Several paralegals from Nevada testified that they charged anywhere from $15.00 to $45.00 per hour depending on their experience and the complexity of the case. The higher figure was often charged by attorneys doing paralegal work. Ultimately, the court determined that $25.00 to $35.00 was an average rate, entitling the experienced paralegal in the instant case to the higher figure of $35.00 per hour. He and the attorney asked for $45.00 an hour. For traveling time, the court reduced the hourly rate to $15.00 per hour. In total, the paralegal's attorney's fees and costs amounted to nearly $3,000, which was only about $1,000 less than what the attorney was awarded for his fees. The case contains calculations of the various kinds of work done in this civil rights suit successfully challenging levels of legal supplies at the prison law library. (Nevada State Prison)

U.S. Appeals Court
POST-JUDGMENT SERVICES

Akbar v. Fairman, 788 F.2d 1273 (7th Cir. 1986). Prison inmates brought a civil rights action challenging the constitutionality of procedures used in disciplinary proceedings. The United States District Court rendered judgment against the prison officials. The court of appeals, 717 F.2d 1105, affirmed in part, reversed in part and remanded. Certiorari was denied. On remand, the district court denied compensatory damages and assessed costs against the prison officials in connection with the bid for certiorari, and appeal and cross appeal were taken. The court of appeals held that: (1) Although there were due process violations, the officials were justified in taking disciplinary action, precluding the award of compensatory damages; and (2) It was in error to award attorney fees in connection with an unsuccessful petition for certiorari.

The court concluded that the prison disciplinary hearing was justified where the prison officials discovered pieces of paper that appeared to be gang materials and two "kites" in the prisoner's possession as he left the segregation unit. Although there was denial of procedural due process in that the disciplinary committee inadequately summarized evidence and reasons supporting the finding of infraction, the prisoner was not entitled to nominal damages in a civil rights suit, notwithstanding that the warden subsequently expunged the disciplinary report and reinstated the prisoner as a law clerk. (Pontiac Correctional Center, Illinois)

U.S. Supreme Court
DETERMINATION

City of Riverside v. Rivera, 106 S.Ct. 2686 (1986). Supreme Court leaves the trial judge broad discretion to determine appropriate attorney fees. Fees do not have to be proportional to the amount of award; $245,456 attorney fee for case which recovered $33,350 upheld.

Plaintiffs sued City of Riverside police for alleged brutality and were awarded $33,350 in damages, of which only $13,000 was for federal claims. The plaintiffs were then awarded $245,456 in attorney's fees when the judge multiplied the amount of hours attorneys spent on the case times the billing rate for attorneys of comparable ability ($125 per hour), under 42 U.S.C.A. Section 1988. In this divided decision (four agreed with the opinion, four dissented, and one separate concurring opinion was filed), the Court found that there did not have to be some proportional relationship between the size of a judgment and the fee award. (Riverside Police Department, California)

U.S. Supreme Court
CONSENT DECREE

Evans v. Jeff D., 106 S.Ct (1986), reh. denied, 106 S.Ct. 2909. Supreme Court allows waiver of recovery of legal fees to be part of negotiated settlement.

In this class action which challenged alleged deficiencies in educational and health care services provided to emotionally and mentally handicapped children in Idaho, a settlement was reached prior to a federal district court trial. The settlement provided that the state defendants would not be responsible for any part of the plaintiff's attorney's fees.

The district court approved the settlement, and the plaintiffs appealed. The U.S. Court of Appeals for the Ninth Circuit invalidated the fee waiver portion of the settlement, letting the rest of the agreement stand.

The U.S. Supreme Court overturned the appeals court decision, concluding that district courts have discretion under 42 U.S.C.A. Section 1988 to refuse to award fees and that the district court did not abuse its discretion in light of the extent of equitable relief which was provided for in the settlement. (Class action on behalf of emotionally and mentally handicapped children, Idaho)

U.S. District Court
PREVAILING PARTY DETERMINATION

Goetz v. Ricketts, 632 F.Supp. 926 (D.Colo. 1986). Inmates who had challenged conditions of confinement sought attorney's fees and costs. The district court held that: (1) the inmates were the prevailing party, and thus were eligible for attorney's fees; (2) fees would be awarded in amount of $42,318; and (3) $1,000 sought for extra witness was not justified.

The plaintiffs are prevailing parties for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some benefit the parties sought in bringing suit. Fees can be awarded to the plaintiff who was only partially successful, especially where party has prevailed on an important matter in course of litigation, even when he ultimately does not prevail on all issues.

Once the plaintiff has been determined to have obtained some of the benefits sought in bringing the civil rights litigation, the plaintiff should be construed to be the prevailing party for purposes of award of attorney fees as long as the underlying constitutional claim is substantial. Long-distance phone calls, postage and photocopying are not reimbursable costs in a civil rights action, since such costs are normally attributed to overhead. (Rifle Correctional Facility, Colorado)

State Appeals Court
ATTORNEY FEES

In Re Head, 228 Cal. Rptr. 184 (Cal. 1986). Prison inmates who successfully challenged, in a habeas corpus action, procedures under which the prison work furlough program was implemented, sought attorney's fees. The Superior Court awarded fees, and the state appealed. The court of appeals reversed. The Supreme Court held that prisoners were entitled to attorney fees, under the statute granting

fees to successful civil claimants, despite the fact that habeas corpus was a special proceeding of a criminal nature, where prisoner's claims could have been presented in a purely civil proceeding.

Prisoners, in a habeas corpus action challenging procedures under which the work furlough program was implemented, presented issues related to the conditions of confinement in the state prison and involving the rights of prison inmates generally. Thus the prisoners were entitled to attorney's fees under the statute granting fees to successful civil claimants, despite the fact that habeas corpus is a criminal proceeding. The nature of relief sought, not the label or procedural device by which action was brought, was determinative of right to seek fees. (Department of Corrections, California)

U.S. District Court
DETERMINATION
PARTIAL SUCCESS

Lock v. Jenkins, 634 F.Supp. 615 (N.D.Ind. 1986). Prevailing plaintiffs in a civil rights action sought an award of attorney's fees and costs. The district court held that: (1) certain costs were not provided for by the statute; (2) certain costs were not adequately documented; (3) certain attorney time was not adequately documented; and (4) the court would reduce the fee by fifty percent to reflect the extent of the plaintiffs' success.

The prevailing party can recover only the statutorily prescribed amount for expert witnesses and not any additional expert fees. The correct standard for taxing fees for expert witnesses is not the amount the expert charged the plaintiff nor the time spent by the expert consulting with attorneys or preparing to testify.

Where the attorney for the successful plaintiffs in a civil rights action had represented the plaintiffs for ten years, where the market rate over the final five years ranged from $35 to $125, and where court would have awarded the attorney $40 per hour in 1981 and $75 per hour based on prevailing market rates in 1985, the court would split the difference and award $50 per hour for all time spent in the action. If the case involves unrelated claims and the plaintiff prevails on some but not all claims, the court may not award a fee for the time spent on the unsuccessful claims. If the plaintiff achieves excellent results in a civil rights action, the attorney should receive a full compensatory fee, but if the plaintiff achieves only partial or limited success, even if claims are interrelated, the product of the hours times the rates may be excessive for award of attorney's fees.

Where plaintiffs prevailed on two of twelve due process claims and on their equal protection claim but not on other due process claims or their first, sixth, or eighth amendment claims, the court would reduce the award of attorney fees, based on reasonable rate times hours, by fifty percent. (Indiana)

State Supreme Court
ATTORNEY FEES

Neb. Dept. of Correctional Serv. v. Carroll, 383 N.W.2d 740 (Neb. 1986). The Supreme Court of Nebraska affirmed the appellate court's ruling that the district court lacked authority to grant attorney's fees for expenses incurred at proceedings before the State Personnel Board and Equal Opportunity Commission. The attorney filed for attorney's fees after representing a Nebraska Department of Corrections employee in his suit alleging his dismissal was racially motivated. The commission ordered him reinstated with back pay, and the department appealed. The court could award the employee's attorney his fees and costs incurred for securing dismissal of the appeal. (Department of Correctional Services, Nebraska)

U.S. District Court
DETERMINATION

Ramos v. Lamm, 632 F.Supp. 376 (D.Colo. 1986). In an action in which the court ruled that the conditions of confinement at a maximum security unit of a penitentiary were unconstitutional, the defendants would be required to pay the plaintiffs' attorney's fees and costs in the amount of $871,920.97. There was no question that the plaintiffs prevailed. After years of litigation, the plaintiff had vindicated most of the rights that they asserted and the benefits they sought. The constitutional claims were significant and substantial. In determining the amount of a reasonable attorney's fee, the court must give special scrutiny to time entries exceeding six to seven hours for a single attorney on a given day, examine hours allotted to specific tasks, determine whether the tasks sought to be charged to the adverse party would normally be billed to the paying client, review time entries for potential duplication of services and deduct "nonproductive" time. (Colorado State Penitentiary)

1987

U.S. Appeals Court
ATTORNEY FEES

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. 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
DETERMINATION
PARTIAL SUCCESS

Bee v. Greaves, 669 F.Supp. 372 (D.Utah 1987). A plaintiff who prevailed on his claim that a physician forced medication upon him during his pretrial detention was entitled to an award of attorney fees in the amount of $37,500.75, rather than the $121,980 that had been requested by his attorneys. Despite the plaintiff's success on his claim against the physician, he was unsuccessful on that claim with respect to numerous county officials, and did not pursue a separate claim regarding his solitary confinement. In calculating the amount of statutorily awardable fees in a civil rights action, the court should multiply the number of hours reasonably expended on litigation times the reasonably hourly rate, and then determine whether the plaintiff had achieved only partial or limited success, and then reduce award by elimination of separate time and effort in pursuing unrelated claims upon which the plaintiff was unsuccessful, and elimination of the time and effort in pursuit of interrelated, nonfrivolous claims but at to which plaintiff achieved only limited success. (Salt Lake County Jail)

U.S. District Court
DETERMINATION

Garmong v. Montgomery County, 668 F.Supp. 1000 (S.D. Tex. 1987). The amount of attorney's fees awarded in the case of an inmate who prevailed in a civil rights suit over a prison beating was adjusted upward because of the undesirability of the case and the fact that the case was accepted on a contingent fee basis. The inmate filed a federal civil rights lawsuit alleging that he was beaten in his cell by other inmates who were incited by an officer who told them that he should be "taken care of" because he had "shot two little kids on a three-wheeler." The inmate was awarded $40,000 in damages after a jury found that the beating occurred pursuant to an official policy of sanctioning the use of force to punish prisoners. Attorneys' fees were awarded in the amount of $174,020.83. The court rejected the argument that the fees should be proportionate to the damages recovered and enhanced the attorneys' fees awarded because the case was taken on a contingent fee basis, and because the result received was exceptional, since it was difficult to prove that official policy sanctioned the widespread use of force on prisoners. Because the case was "undesirable" and unpopular, resulting in public harassment of the plaintiff's counsel in the media and community, the court also enhanced the award of fees by $5 an hour to reflect that fact. (Montgomery County Jail)

U.S. District Court
PREVAILING PARTY

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. District Court
DETERMINATION
PARTIAL SUCCESS

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)

1988

U.S. Appeals Court
PARTIAL SUCCESS

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

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

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

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
ATTORNEY FEES
PREVAILING
PARTY

Mayberry v. Walters, 862 F.2d 1040 (3rd Cir. 1988). An inmate brought a civil rights action against prison officials. The U.S. District Court ruled for the inmate, and the defendants appealed. The appeals court, affirming in part, reversing and remanding in part, found that evidence supported a finding for the inmate. The court also found that the pro se inmate was not entitled to costs for services rendered to him by a paralegal; but the court may award the prevailing civil rights plaintiff compensation for services rendered by his or her attorney in the action even though such services did not cover the trial, so long as they would be awardable to any prevailing party with counsel. (Pennsylvania State Prison)

U.S. District Court
FREEDOM OF
INFORMATION
ACT

Mendez-Suarez v. Veles, 698 F.Supp. 905 (N.D. Ga. 1988). A detainee brought a suit against a prison guard and the United States seeking damages for injuries received when attacked by another detainee. The inmate filed a supplemental complaint under the Freedom of Information Act. On cross motions for summary judgment concerning FOIA claims and with regard to liability of the prison guard, the district court found that the defendant was not entitled to attorney fees under FOIA. To substantially prevail in a Freedom of Information Act suit, as required for an award of attorney fees against the United States, the plaintiff must show that FOIA action could reasonably be regarded as necessary to obtain the information and that action had a substantial causative effect on the delivery of the information. The mere fact that the information sought was not released until after the suit was instituted is insufficient. (Federal Penitentiary, Atlanta, Georgia)

U.S. District Court
DETERMINATION

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. Supreme Court
PREVAILING
PARTY

Rhodes v. Stewart, 109 S.Ct. 202 (1988). Two prison inmates brought an action challenging prison officials' refusal to allow them to subscribe to a magazine. The grant of relief in favor of the inmates and an award of attorney fees by the U.S. District Court was vacated and remanded. On remand, the district court affirmed its earlier award. The appeals court affirmed. On petition for certiorari, the U.S. Supreme Court, granting writ and reversing the decision, found that where the action was not brought as a class action and one of the two inmates had died prior to the issuance of the district court order and the other had been released from prison prior to the issuance of the order, neither was a prevailing party entitled to an award of attorney fees. (Ohio Department of Rehabilitation and Correction)

U.S. District Court
PREVAILING PARTY

Vester v. Murray, 683 F.Supp. 140 (E.D. Va. 1988). When an inmate did not receive services from the prison dentists as quickly as he felt necessary he filed a lawsuit against the dentists and several jail administrators alleging "cruel and unusual punishment." The court found that the dentists were not "under color of law" since the dentists did not exercise custodial or supervisory duties in the prison. Further, no allegation of inadequate medical treatment or injury was shown - only "dissatisfaction" with the wait. The inmate was directed by the court to pay attorneys' fees and costs to the defendants for this meritless lawsuit. The court also noted that the inmate plaintiff was a "renown" writ writer.

U.S. Appeals Court
DETERMINATION

Wood v. Sunn, 865 F.2d 982 (9th Cir. 1988). A prisoner brought a suit against state prison officials alleging that they had been deliberately indifferent to his serious medical problems, thus violating his right to be free of cruel and unusual punishment. The U.S. District Court entered judgment in favor of the prisoner, and the state

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

Factors to be considered in determining a lodestar figure for award of attorney fees include the time and labor required, the novelty and difficulty of questions involved, the skill requisite to perform the legal service properly, the preclusion of other employment, the customary fee, whether the fee is fixed or contingent, the time limitations imposed by the client or circumstances, the amount involved and results obtained, the experience, reputation and ability of the attorneys, the "undesirability" of the case, the nature and length of the professional relationship with the client and awards in similar cases. The failure to consider appropriate factors in determining the reasonableness of the award of attorney fees to the prisoner was an abuse of discretion. (Oahu Community Correctional Center, Hawaii)

1989

U.S. District Court
ATTORNEY FEES
DETERMINATION

Bailey v. Wood, 708 F.Supp. 249 (D.Minn. 1989), reversed, 909 F.2d 1197. The prisoner sued a prison warden for failing to provide safe conditions and adequate protection following a series of threats and attacks by another inmate. He prevailed at the district court trial and was awarded $26,750 in compensatory and $28,600 in punitive damages. His attorney sought an award of $32,390 in attorneys' fees and $1,153.23 in costs. The court granted it. The fees awarded amount to $100 per hour, despite the fact that the attorney's normal hourly rate was $80 per hour. The court found that $100 per hour was a reasonable market rate for the work done. In addition, the court found that the results of the case were "truly exceptional," and that the attorney had pursued a difficult case in lieu of case more certainly remunerative. In these circumstances, the court held, $80 per hour would be an "unreasonably low" fee. In considering the upward adjustment from a normal hourly fee charged by the prevailing attorney in a civil rights action, among the factors to be considered are the time and labor required. Other factors include the novelty and difficulty of the issues presented, the skills required to execute the legal services properly, any preclusion of alternate employment, the attorney's customary fees, any time limitation posed by the client or circumstances, the amount involved and the results obtained, the desirability of the case, the nature and length of the professional relationship with the client, whether the plaintiff challenged an institutional practice or condition, and whether the result of the litigation has important social benefits such as deterring future civil rights violations. On appeal, the case was reversed. The court of appeals ordered the district court to find for the Warden, suggesting that this type of case would be more appropriately addressed in state courts, where "deliberate indifference" need not be established. (Oak Park Heights Prison, Minnesota)

U.S. District Court
PARTIAL SUCCESS
PREVAILING PARTY

DeGidio v. Pung, 704 F.Supp. 922 and 723 F.Supp. 135 (D. Minn. 1989). State prison inmates sought relief from prison officials' allegedly inadequate response to a tuberculosis epidemic. The federal district court found that the prison officials' inadequate response to a tuberculosis epidemic, even if violative of the inmates' eighth amendment rights, did not warrant injunctive relief in that, since the initiation of the litigation, the officials had significantly remedied the deficiencies to a point where the medical care and tuberculosis control were not inconsistent with contemporary standards of decency, and there was no evidence that past problems were likely to recur unless enjoined.

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

U.S. District Court
42 U.S.C.A.
SECTION 1988
PARTIAL SUCCESS
DETERMINATION

Knop v. Johnson, 712 F.Supp. 571 (W.D. Mich. 1989). The counsel for inmates who brought a successful civil rights action against Michigan prison authorities petitioned for attorney fees under the Attorney Fees Act. The district court found that a reduction in fee award for only partial success on race-related claims was warranted; expert witness fees could not be recovered under the Attorney Fees Act, but rather, the plaintiffs were entitled only to statutory witness fees; and the time spent by fee counsel was reasonable. The attorneys sought an award of $2,043,960.38 in attorneys fees, expenses and costs. The court awarded fees under 42 U.S.C. Section 1988, but reduced

the amount to $1,484,006.28, including costs and expenses of $184,443.24. The court noted that the plaintiffs had initially presented four claims regarding alleged racial discrimination among prisoners: 1) discrimination in job assignments; 2) segregation of cafeteria serving lines; 3) discrimination in assignment to punitive segregation and protective custody; and 4) staff displays of racially motivated hostility towards inmates. The plaintiffs succeeded only on the fourth of these. The court therefore ruled that the fee award must be reduced to account for the hours spent on the unsuccessful claims. The court also found that expert witness fees of $97,530.61 were not recoverable under 42 U.S.C. Sec. 1988, but that the successful plaintiffs were rather entitled only to statutory witness fees, as provided under 28 U.S.C. Sec. 1821(b) of $30 for each day they appeared at a deposition or in court, plus travel expenses. (Michigan Prison)

U.S. District Court
CONSENT DECREE
PREVAILING PARTY

MacLaird v. Werger, 723 F.Supp. 617 (D. Wyo. 1989). Upon the inmate's motion for attorney fees for the successful enforcement of consent decrees in a prison conditions case, the district court found that the inmate who filed the motion to reopen the prison conditions case was entitled to recover attorney fees under the Civil Rights Attorney's Fees Awards Act as a "prevailing party," although there had been no adjudication where the actions that the inmate sought to compel were legally required by consent decrees in the case and where the inmate's motion to reopen the case was a substantial factor in prompting the actions. (Goshen Co. Jail, Wyoming)

U.S. Supreme Court
42 U.S.C.A. SECTION 1988
DETERMINATION
ENHANCEMENT
PARALEGALS

Missouri v. Jenkins By Agyei, 109 S.Ct. 2463 (1989). Prevailing plaintiffs in a school desegregation case sought recovery of attorney fees. In this major school desegregation litigation in Kansas City, Missouri, desegregation remedies were granted against the State of Missouri and other defendants. The U.S. District Court awarded attorney fees, and appeal was taken. The appeals court affirmed. On grant of certiorari, the Supreme Court found that the eleventh amendment did not prohibit the enhancement of fee award under the Civil Rights Attorney's Fees Awards Act against the state to compensate for delay in payment, and the separate compensation award under the Civil Rights Attorney's Fees Awards Act for paralegals, law clerks, and recent law school graduates at prevailing rates was fully in accord with the Act. According to the court, the phrase "reasonable attorney's fee" in the civil rights attorney fees statute does not refer only to work performed personally by members of the bar; rather, the term refers to a reasonable fee for the work product of the attorney, and thus, to the work of paralegals as well as that of attorneys. An adjustment for delay in payment is an appropriate factor in determining what constitutes a reasonable attorney's fee under Section 1988. The district court correctly compensated the work of paralegals, law clerks, and recent law graduates at the market rates for their services, rather than at their cost to the attorneys. Clearly, "a reasonable attorney's fee" as used in Section 1988 cannot have been meant to compensate only work performed personally by members of the Bar. Rather, that term must refer to a reasonable fee for an attorney's work product, and thus must take into account the work not only of attorneys, but also the work of paralegals and the like. (Kansas City Missouri School District)

1990

U.S. Appeals Court
PARTIAL SUCCESS

Allen v. Higgins, 902 F.2d 682 (8th Cir. 1990). An inmate filed a civil rights action against prison officials alleging 21 separate constitutional violations concerning treatment and conditions of confinement. The U.S. District Court awarded the inmate $1 in damages on the claim involving a prison official's failure to allow the inmate to receive a government surplus catalog, and awarded the plaintiff's attorney $19,927.64 in attorney fees. The defendant appealed. The court of appeals held that the prison official who did not examine the requested catalog before disallowing availability was not entitled to qualified immunity from damages, because he could not have reasonably assessed whether his conduct violated clearly established law. The court also ruled that an attorney fee award of nearly $20,000 to an inmate who succeeded on a civil rights claim against only one of ten defendants and only one of 21 original claims, for a total damage award of only $1, was excessive, and would be reduced to $10,000; each of the eight claims dismissed either on the day of trial or at the close of evidence were unrelated to the claim on which the plaintiff ultimately prevailed and thus work on those unsuccessful and related claims could not be compensated. (Central Missouri Correctional Center)

U.S. Appeals Court
PARTIAL SUCCESS

DeGidio v. Pung, 920 F.2d 525 (8th Cir. 1990). State prisoners sought relief from prison officials' allegedly inadequate response to tuberculosis outbreaks at the prison. The U.S. District Court concluded that the officials had violated the prisoners' Eighth Amendment rights, but denied injunctive relief based on the finding that the officials had remedied deficiencies since the initiation of the litigation. On the prisoners' application for award of attorney fees, the district court reduced the fee request to reflect the limited success and to account for incomplete and deficient time records. The prison officials appealed, and the prisoners cross-appealed. The court of appeals found that the prison officials' consistent pattern of reckless or negligent conduct in responding to the tuberculosis outbreak was sufficient to establish deliberate indifference in violation of the Eighth Amendment, so as

to support a finding for purposes of fee award that the prisoners were prevailing party. The reduction of the fee request by 65% to account for the limited success and to account for incomplete and deficient time records was within the court's discretion. The earlier consent decree could not be enforced through the Section 1983 action for damages, and the consent decree did not create a liberty interest subject to protection of procedural due process or place substantive restrictions on exercise of discretion by the prison officials. (Minnesota Correctional Facility, Stillwater)

U.S. District Court
PREVAILING PARTY

Faulkner v. McLochlin, 732 F.Supp. 945 (N.D. Ind. 1990). A jail inmate brought an action against a sheriff to recover attorney's fees incurred in connection with a civil rights action. The sheriff moved for legal fees. The district court found that the inmate was entitled to legal fees as the prevailing party in a claim that the sheriff had violated his civil rights by opening three items of mail outside his presence, even though the judgment was limited to $1.00 and the sheriff was entitled to attorney's fees incurred in connection with defending claims of the inmate found to be frivolous. (Fulton County Jail, Indiana)

U.S. District Court
DETERMINATION
42 U.S.C.A.
Section 1983
PREVAILING PARTY

Hendrickson v. Branstad, 740 F.Supp. 636 (N.D.Iowa 1990), modified, 934 F.2d 158. Juvenile detainees brought an action against the Governor of Iowa, the executive director of the Iowa Criminal and Juvenile Justice Planning Agency, and county officials, alleging violations of due process, the eighth amendment, the Juvenile Justice and Delinquency Prevention Act, and the state and federal contract law, arising out of the county's practice of jail juveniles in adult detention facilities. Parties filed a joint motion to dismiss the action. The juveniles filed a renewed motion for attorney fees and costs pursuant to the federal civil rights statute. The district court granted the juveniles' motion; and the action was dismissed. The court found that the juveniles were "prevailing parties" entitled to an award of attorney fees under the federal civil rights statute, where they were catalyst in bringing the State of Iowa into compliance with the mandate of the Act that juveniles not be jailed in adult detention facilities; a reasonable rate for lead counsel was $180 per hour, and $75 and $90 per hour for co-counsel; the lodestar award would be enhanced by 25% for the exceptional success and results, complexity of action, and difficulty in securing representation but for contingency enhancement. The state defendants would be held liable for 90% of the awarded fees and costs, although they were not brought into the action against the county defendants until two years after the juveniles filed the initial action. The juvenile detainees were "prevailing parties" entitled to an award of attorney fees in the civil rights action arising out of the county's practice of jailing juveniles in adult detention facilities, even though the action was dismissed as moot due to Iowa legislative enactments, where the juveniles' action and the district court's injunctive relief preceded Iowa legislative action by more than three years, and thus the juveniles were catalyst in bringing Iowa into compliance with the mandate of the Juvenile Justice and Delinquency Prevention Act that juveniles not be jailed in adult detention facilities. In determining the "reasonableness" of an attorney fee award under the federal civil rights statute, factors to be considered are: time and labor required; novelty and difficulty of questions involved; skill requisite to perform the legal service properly; the preclusion of other employment by the attorney due to the acceptance of the case; the customary fee; whether the fee is fixed or contingent; the time limitations imposed by the client or circumstances; the amount involved and results obtained; the experience, reputation, and ability of the attorney; the "undesirability" of the case; the nature and length of the professional relationship with the client; and awards in similar cases. On appeal, the court determined that the 25% enhancement was not warranted. (Iowa Criminal and Juvenile Justice Planning Agency)

U.S. Appeals Court
DETERMINATION
POST-JUDGMENT
SERVICES

Inmates of the Allegheny County Jail v. Wecht, 901 F.2d 1191 (3rd Cir. 1990). County officials appealed from an order of the U.S. District Court imposing sanctions based on officials' violation of court orders limiting the population of the county jail. The appeals court found that imposing sanctions upon county officials for failing to comply with court-ordered jail population limits was not an abuse of discretion because the order was designed to coerce the county into spending funds needed to develop and implement a plan for alternative, constitutionally adequate housing for inmates. However, a procedure employed by the district court in awarding attorneys' fees to the inmates' counsel in the jail overcrowding case was an abuse of discretion because the court did not afford the county officials an opportunity to review and contest the inmates' fee petition, and the court did not state a basis of its fee determination. "In the more than thirteen years since the inmates filed their complaint, Allegheny County has consistently failed to house its inmates in compliance with the sparse and minimal commands of the eighth amendment. Through much of this period, Allegheny County officials have also consistently violated court orders designed to remedy severe overcrowding at the jail." (Allegheny County Jail, Pittsburgh, Pennsylvania)

U.S. Appeals Court
DETERMINATION
PARTIAL SUCCESS

Johnson v. Hardin County, Ky., 908 F.2d 1280 (6th Cir. 1990). A prisoner brought a suit against an elected county jailer, his first assistant, and the county, as well as other defendants, alleging a deliberate indifference to his

serious medical needs. The U.S. District Court entered a judgment on jury verdicts of $15,000 against the county and $1,000 each against the jailer and his first assistant and awarded the prisoner $20,173 in attorney fees and expenses, and the defendants appealed. The Court of Appeals, reversing and remanding, found that a reasonable jury could determine that jail officials were deliberately indifferent to the prisoner's serious medical needs. The county could not be held liable for the jailers' actions, where there was no evidence indicating that the jailer was invested with the authority to make all of the county's medical policy decisions and there was no evidence demonstrating that mistreatment had become custom in the jail tantamount to rule of law. Remand was required on the award of attorneys fees in light of the reversal on the part of the judgment in favor of the prisoner and the district court's failure to explain a reason for applying a multiplier. Where the success in the prisoner's civil rights claim was reduced on appeal, as a result of the finding that the county could not be held liable for the jailers' deliberate indifference to the prisoner's serious medical needs, a remand was required on the issue of the application of the 1.5 multiplier to lodestar figure for the attorney fees, particularly in light of the district court's failure to explain the reasons for its enhancement of the case. (Hardin County Detention Center, Kentucky)

U.S. Appeals Court
DETERMINATION
POST-JUDGMENT
SERVICES

Plyler v. Evatt, 902 F.2d 273 (4th Cir. 1990). Inmates who prevailed in a civil rights action challenging overcrowding of the state prison system sought an award of attorney fees. The U.S. District Court entered various rulings from which state corrections officials appealed. The court of appeals affirmed, and found that the hourly rates challenged by state corrections officials were not clearly erroneous, and inmates could be permitted to recover attorney fees incurred in opposing the state corrections officials' motion to modify the original consent decree to permit "double-celling" in undersized cells at some new facilities though modification was permitted. The district court acted within its authority in fixing a fee rate for the attorney at $150 per hour. (South Carolina Department of Corrections)

U.S. District Court
ATTORNEY FEES
DETERMINATION
PARTIAL SUCCESS
PREVAILING PARTY

Williams v. City of New York, 728 F.Supp. 1067 (S.D.N.Y. 1990). A former pretrial detainee filed a federal civil rights lawsuit setting forth a number of claims, including placement in punitive segregation without constitutionally adequate disciplinary processes. He was awarded $100,000 for the violation of the due process claim alone. The trial court initially ordered a retrial on the issue of damages, finding that it had erred in failing to instruct the jury that it could award nominal damages, such as a dollar. The plaintiff ultimately agreed to accept a reduction of the damages to $10,000 plus attorneys' fees and expenses. The plaintiff then petitioned the court to award $99,075 in attorneys' fees and $5,381.75 in costs. The court awarded $24,378.25 in attorneys' fees and $5,381.75 in costs, for a total of $29,760. It found that the plaintiff was entitled to recover attorneys' fees for the time spent preparing for the retrial, even though it never occurred. The court also said that only one-third of the attorneys' fees incurred were related to pursuit of the claim on which the plaintiff prevailed, and therefore, two-thirds of the attorneys' fees would be disallowed. Furthermore, the hourly rate requested for the attorneys would be reduced because they were from a small law firm, rather than from a large firm with more expenses. (Rikers Island Facility, New York)

1991

U.S. Appeals Court
DETERMINATION
42 U.S.C.A.
Section 1983
PREVAILING PARTY

Cabrales v. County of Los Angeles, 935 F.2d 1050 (9th Cir. 1991). A prevailing civil rights plaintiff sought compensation for attorney fees incurred in opposing defendant's two petitions for writ of certiorari to the U.S. Supreme Court. The U.S. District Court granted award only for the second petition on the grounds that the Supreme Court had ruled against the plaintiff when it granted the first petition for certiorari, and the plaintiff appealed. The court of appeals found that the prevailing civil rights plaintiff who was unsuccessful when the defendant filed its first petition for certiorari, but who ultimately prevailed when the supreme court denied the defendant's second petition for certiorari, was entitled to recover attorney fees incurred in opposing both petitions. (Los Angeles County, California)

U.S. Appeals Court
PARTIAL SUCCESS
42 U.S.C.A.
Section 1988

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. The attorney fees of $62,643.20 on a $3,500 punitive damages judgment was not excessive even given the fact that thirteen of fifteen claims were lost. The fifteen "claims" were based on related legal theories and involved a common core of facts and it was impossible to allocate the time spent among the various claims. (Hendry Correctional Institution, Florida)

U.S. Appeals Court
42 U.S.C.A.
Section 1988
POST-JUDGMENT
SERVICES

Dotson v. Chester, 937 F.2d 920 (4th Cir. 1991). Inmates' federal civil rights suit challenging conditions in a county jail as unconstitutional and seeking declaratory and injunctive relief was settled, and fees awarded inmates as prevailing parties were allocatted between the county commissioners and the sheriff. After the sheriff did not pay his share and the inmates began to look to the county's assets for payment of fees allocated to the sheriff, the commissioners moved for injunctive relief to prohibit garnishment. The U.S. District Court found that the county was subject to liability, and the commissioners appealed. Thereafter, the district court found the sheriff and county responsible for supplemental fees incurred by the inmates in attempts to execute judgment for fees rendered against the sheriff, and the commissioners appealed. The court of appeals, affirming the decisions, found that the Dorchester County Sheriff, in managing and operating the county jail in Maryland, essentially acted in the guise of a county official and held the final county policy-making authority over the county jail; if the sheriff were without funds to satisfy the settled upon fee, the county, rather than the state, was required to satisfy the sheriff's obligation. The attorney fees and costs were properly awarded under a statute providing for the award of attorney fees in federal civil rights litigation for amounts expended in an attempt to recover the portion of original attorney fee award initially allocated to the sheriff. (Dorchester County, Maryland)

U.S. Appeals Court
ATTORNEY FEES
DETERMINATION
PREVAILING PARTY

Hendrickson v. Branstad, 934 F.2d 158 (8th Cir. 1991). Juvenile detainees brought an action against state and county officials alleging a violation of the Juvenile Justice and Delinquency Prevention Act's prohibition against holding juveniles in adult detention facilities. After legislative changes warranted the dismissal of the suit as moot, the U.S. District Court awarded attorney fees to the detainees, and the state appealed. The court of appeals found that the juveniles were the prevailing parties and entitled to attorney fees, even though the district court did not address every theory raised by detainees. Since the juveniles did not achieve such an extraordinary result, the suit was not so contingent as to warrant a 25% fee enhancement. (Webster County Adult Detention Facility, Iowa)

U.S. Appeals Court
ATTORNEY FEES

Long v. Shillinger, 927 F.2d 525 (10th Cir. 1991). An inmate brought an action against a warden seeking damages for violations of his civil rights arising out of the warden's alleged permitting of Oklahoma to extradite the inmate without affording the inmate process due under Wyoming's Extradition Act. The U.S. District Court granted the inmate's motion for summary judgment and awarded the inmate nominal damages of one dollar, and the inmate appealed. The court of appeals found that, in determining whether to appoint counsel for in forma pauperis litigants, the district court should consider a variety of factors, including the merits of the litigant's claims, nature of factual issues raised in the claims, litigant's ability to present claims, and the complexity of the legal issues raised by the claims, and the trial court did not abuse its discretion in refusing to appoint counsel for the inmate. In addition, the inmate failed to establish he was entitled to anything other than nominal damages. Evidence that the inmate was not guilty of crimes charged could not be considered by a court reviewing a habeas petition, the inmate made no showing that he could have prevented the extradition, and the attorney's fees and other expenses flowed from extradition, not from deprivation of due process. (Wyoming State Penitentiary)

U.S. District Court
PARTIAL SUCCESS
42 U.S.C.A.
Section 1988

Rivera v. Dyett, 762 F.Supp. 1109 (S.D.N.Y. 1991). In a civil rights action arising from conditions of incarceration at a facility, counsel moved for an order granting award of interim attorney fees on the grounds that the plaintiff was "prevailing party" with respect to certain preliminary relief. The district court found that, where the prison inmate prevailed in his civil rights action on only one of four demands for relief, but various elements of relief sought were largely interrelated, all pertaining to aspects of his medical, psychiatric and hygienic care, it would be unfair to reduce excessively the award of attorney fees, and the court reduced the award of allowable fees by 33 percent. In addition, the counsel for the plaintiff, who had argued that the plaintiff was likely to succeed on the merits when seeking injunctive relief, could not thereafter, in support of application for attorney fee award, argue that there was a "substantial risk" that no legal fee would be awarded. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
ATTORNEY FEES
PREVAILING PARTY

Warren v. Fanning, 950 F.2d 1370 (8th Cir. 1991). A state inmate sued a prison physician, alleging an Eighth Amendment violation by virtue of the physician's deliberate indifference to the inmate's medical needs. The U.S. District Court entered judgment on a jury verdict finding that the physician violated the inmate's Eighth Amendment rights, but awarded the inmate neither compensatory nor moninal damages. The inmate's motion for attorney fees was denied. Both parties appealed. The court of appeals found that the inmate was not the "prevailing party," and was not entitled to Section 1988 attorney fees in his action against the prison physician for money damages only. Although the inmate received a jury verdict in his favor on liability, he was not awarded damages of any kind. (Missouri Eastern Correctional Center)

1992

U.S. Appeals Court
DETERMINATION
PREVAILING PARTY

Collins v. Romer, 962 F.2d 1508 (10th Cir. 1992). Prisoners filed a civil rights suit challenging a Colorado prisoner medical copayment statute. After the statute was amended to exclude most medical services from the copayment charge, the prisoners sought attorney fees. The United States District Court awarded attorney fees, and the Colorado officials appealed. The appeals court found that the award of attorney fees was justified because the prisoners' suit was the substantial catalyst in achieving an amendment to the Colorado copayment statute eliminating the copayment requirement in most instances. Evidence supported the district court's determination of the total number of hours that were compensable in awarding attorney fees in the prisoner civil rights action. (Colorado Department of Corrections)

1993

U.S. District Court
DETERMINATION

Covington v. District of Columbia, 839 F.Supp. 894 (D.D.C. 1993). Prisoners who succeeded on a civil rights claim sought an award of attorney's fees under the Civil Rights Attorney's Fee Awards Act. The district court found that the relevant market for determining attorney's fees for public interest but privately practicing attorneys was the market of all attorneys who handled all kinds of complicated federal litigation. In addition, the Civil Rights Attorney's Fee Awards Act permits a claim for fees for time expended by law students who were paid by a contingent fee. The prisoners were also entitled to compensation for attorney fees incurred in connection with preparation of the fee petition. The court awarded $341,737.25 for the total fees for the merits, and $21,380.00 for the fee litigation. (District of Columbia's Correctional Facility at Lorton)

1994

U.S. Appeals Court
ATTORNEY FEES
PARTIAL SUCCESS

Doty v. County of Lassen, 37 F.3d 540 (9th Cir. 1994). Prisoners sued a county and sheriff for alleged civil rights and constitutional violations resulting from jail conditions. The U.S. District Court issued a preliminary injunction, then granted only a small fraction of the injunctive relief sought, and the prisoners appealed. The appeals court found that to determine whether prisoners obtained relief entitling them to attorney fees as a result of litigation, even if changes were not part of any order, the court determines what the prisoners sought to accomplish in bringing the lawsuit, whether the lawsuit was causally linked to the relief actually obtained, and whether there is a legal basis for the claim. Also, the claim must not be frivolous, unreasonable, or groundless. (Lassen County Jail, California)

U.S. Appeals Court
ATTORNEY FEES
DETERMINATION

Jones v. Lockhart, 29 F.3d 422 (8th Cir. 1994). A state prisoner brought a civil rights action against prison officials alleging deliberate indifference to his serious medical needs, excessive force, and failure to supervise. The U.S. District Court entered judgment against one defendant and awarded the plaintiff $1 in compensatory damages and $1 in punitive damages on the claim of excessive force. The plaintiff was also awarded $25,000 in attorney fees and the defendants appealed that award. The appeals court, affirming in part and remanding for reduction of the award, found that the district court abused its discretion in awarding the sum of $25,000 for attorney fees. The award was based on the erroneous premise that the plaintiff had succeeded on the claim of deliberate indifference to serious medical needs. Considering that counsel was appointed by the court and ably performed his duties, and that the plaintiff prevailed on the issue of excessive force, $10,000 was an appropriate attorney fee award. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
DETERMINATION
POST-JUDGMENT
SERVICES

Kersch v. Board of County Com'rs of Natrona County, 851 F.Supp. 1541 (D.Wyo. 1994). After a county was found to be in contempt for failing to comply with the terms of a consent decree governing jail conditions, inmates filed a motion for attorney fees. The district court found that the efforts by the inmates' attorneys with regard to the contempt motion, seeking to enforce the consent decree regarding the county jail conditions, constituted reasonable post-judgment work that was necessary to secure improvements anticipated by the consent decree, entitling the attorneys to an award of fees. In addition, an out-of-state attorney was entitled to fees based upon the billing rate prevailing in the community in which his office was located, rather than the billing rate of the local community, as there was no evidence that there were attorneys in the local community or anywhere in Wyoming who were available to supply the special expertise necessary for the "totality of conditions" lawsuit. (Natrona County Jail, Wyoming)

U.S. Appeals Court
DETERMINATION

Maul v. Constan, 23 F.3d 143 (7th Cir. 1994). After nominal damages were awarded to an inmate in a civil rights action, corrections officials filed a motion for relief from an attorney fee award. The U.S. District Court denied the motion and the corrections officials appealed. The appeals court, reversing and remanding, found that no attorney fees were warranted. The court noted that the inmate received only nominal damages from his

Section 1983 suit for denial of procedural due process in the forced administration of psychotropic medication, and should not have been awarded attorney fees under Section 1988. Although the inmate prevailed on a significant legal issue, the difference between the judgment sought and obtained was great and the public purpose of the litigation was minimal. In addition, the significance of the legal issue on which the plaintiff prevailed is the least important of three factors to be considered in determining whether the plaintiff, who had obtained only nominal damages, is nonetheless entitled to receive attorney fees in the civil rights action. (Indiana's Westville Correctional Center)

U.S. Appeals Court
42 U.S.C.A.
Section 1988

Rumsey v. N.Y. State Dept. of Corr. Services, 19 F.3d 83 (2nd Cir. 1994) U.S. cert. denied 115 S.Ct. 202. Correctional employees brought an action against the New York State Department of Correctional Services challenging rescheduling of employees' pass days to coincide with their military reservist obligations. The U.S. District Court entered judgment in favor of the employees and awarded damages. On cross appeals, the court of appeals affirmed in part, reversed in part and remanded. The appeals court found that the alteration of pass days to correspond with military reservist obligations violated the seniority provisions of the collective bargaining agreement. However, the alteration of pass days did not deprive the employees of "incident or advantage of employment," in violation of the Veterans' Reemployment Rights Act. The employees were not entitled to recover pay for days on which they used accrued personal leave or sick time rather than notifying the Department of their military duties. In addition, even if employees had stated a substantial equal protection claim, which they did not, enforcement provisions of the Veterans' Reemployment Rights Act supplanted any Section 1983 claim, precluding an award of attorney fees under Section 1988. (New York State Department of Correctional Services)

U.S. Appeals Court
DETERMINATION

Sockwell v. Phelps, 20 F.3d 187 (5th Cir. 1994). Inmates filed a Section 1983 action against former Louisiana prison officials alleging that the general policy of segregating two-person cells violated equal protection. The U.S. District Court found for the inmates and cross appeals were taken. The court of appeals found that a nominal compensatory damages award to black inmates whose equal protection rights were violated by the policy was not clearly erroneous in the absence of evidence that inmates were confined without privileges when vacancies existed in two-person cells occupied by white inmates. A punitive damages award totaling $4,000 was not an abuse of discretion. An evidentiary hearing was required on reasonableness of fees before attorney fees could be awarded to the prisoners. (Louisiana State Penitentiary)

1995

U.S. District Court
DETERMINATION
42 U.S.C.A.
Section 1988

Austin v. Pennsylvania Dept. of Corrections, 876 F.Supp. 1437 (E.D.Pa. 1995). Inmates brought a class action pursuant to 42 U.S.C.A. Section 1983 and the Rehabilitation Act contesting the practices and conditions of confinement in state correctional institutions. After extensive discovery and numerous court proceedings, the parties engaged in settlement negotiations and submitted a proposed settlement agreement for court approval. The district court found that an award of $1.4 million for attorneys' fees and costs was reasonable for plaintiffs' counsel in the inmates' class action where the plaintiffs prevailed through the settlement and obtained excellent results, the plaintiffs' counsel expended 7,850 attorney hours and 3,020 paralegal hours on the case, and the amount awarded represented approximately half the lodestar figure. (State Correctional Institution ["SCI"]- Camp Hill, SCI-Cresson, SCI-Dallas, SCI-Frackville, SCI-Graterford, SCI-Greensburg, SCI-Huntingdon, the State Regional Correctional Facility at Mercer, SCI-Retreat, SCI-Rockview, SCI-Smithfield, SCI-Waymart, and SCI-Waynesburg, Pennsylvania)

U.S. District Court
DETERMINATION
PARTIAL SUCCESS

Gregory v. Weigler, 873 F.Supp. 1189 (C.D.Ill. 1995). A plaintiff who prevailed in a civil rights action against police officers moved for attorney fees and costs under 42 U.S.C.A. Section 1988. The district court found that the plaintiff's attorneys' alleged lack of experience in civil rights cases did not support lowering their hourly rates. The fact that the plaintiff did not succeed in his claims against all the defendants and obtained a relatively small judgment against the remaining defendants also did not support a reduction of attorney fees award. The fact that the issues involved in the plaintiff's action were arguably not complex did not support a reduction of attorney fees award. The court also found that the plaintiff was not entitled to costs for transportation expenses of a witness. The plaintiff failed to submit a receipt or other evidence of the cost or evidence that the rate charged for airfare was the most economical rate reasonably available. The plaintiff was entitled to recover the costs of computerized legal research. (Jacksonville Police Station, Illinois)

U.S. Appeals Court
DETERMINATION
PREVAILING PARTY

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 granted attorney fees. The inmates appealed. The appeals court found that in awarding attorney fees in the inmates' Section 1983 action, the trial court correctly determined a reasonable hourly rate of $150 per hour. This was based on what lawyers of comparable skill and experience practicing in the area in which the litigation occurred would charge for their time. (Oklahoma State Penitentiary)

U.S. District Court
DETERMINATION
42 U.S.C.A.
Section 1988

W.C. v. DeBruyn, 883 F.Supp. 354 (S.D. Ind. 1995). In a civil rights action, plaintiffs' counsels petitioned for attorney fees under Section 1988. The district court found that the appropriate attorney fee rates in the civil rights action litigated in Indianapolis were $175 per hour for the senior attorney and $125 per hour for the associate attorney. The court awarded attorney fees to the plaintiffs for ten hours of research and writing, rather than the 19.2 hours that was requested. Time records did not indicate the nature of the research and writing performed by either attorney, and the procedural motions filed in the matter were routine and were supported by a single, ten-page brief. Also, where both of the plaintiffs' attorneys attended a deposition and pretrial conference, the court allowed the senior attorney to recover the full value of his time investment, but reduced the associate attorney's time reimbursement request by half. Although there was no particularized showing of a need whereby both attorneys were required to attend those proceedings or that both actually participated, there is a certain value in two attorneys conducting litigation. Finally, the plaintiffs' attorneys were awarded attorney fees for one hour expended in responding to the defendants' brief in opposition to fee requests, rather than the two hours they requested. If the plaintiffs' initial fee request had been sufficiently particularized and detailed, the defendants likely would not have had a basis to quarrel. (Indiana)

1996

U.S. Appeals Court
PARTIAL SUCCESS
PLRA-Prison Litigation Reform Act
DETERMINATION

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

1997

U.S. District Court
42 U.S.C.A Sec. 1983
PLRA-Prison Litigation Reform Act

Blissett v. Casey, 969 F.Supp. 118 (N.D.N.Y. 1997). Three attorneys who had obtained a judgment for a prisoner moved for award of fees under § 1988. The district court held that limitations on attorney fees recoverable under the Prisoner Litigation Reform Act (PLRA) do not apply retroactively, and the PLRA was inapplicable to a claim by an attorney retained before its enactment for work performed after its enactment. The court ruled that local attorneys would be compensated at the requested hourly rates of $135 and $150 but that the attorney from New York City would receive the local rate of $150 rather than the requested rate of $250. The court held that the attorneys would be compensated only for one-half of the time spent in trial preparation because the matter could have been handled by one attorney. The three attorneys had requested a total of $123,775 but were awarded only $93,403 by the court. (New York State Department of Correctional Services)

U.S. District Court
CONSENT DECREE

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

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

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. The court also held that the plaintiffs were not entitled to attorney fees, despite the claim that their suit was the catalyst for a change in visitation policy. The court noted that a policy in effect since 1992 was clarified by the county, allowing visits with children under eight years of age with the permission of the jail command. (Salt Lake County Metro Jail, Utah)

U.S. Appeals Court
SECTION 1988
PREVAILING PARTY

Weaver v. Clarke, 120 F.3d 852 (8th Cir. 1997). An inmate brought a § 1983 action against employees of the department of correctional services alleging Eighth Amendment violations arising from his exposure to environmental tobacco smoke (ETS). The defendants imposed a smoking ban in all correctional facilities and then prevailed on summary judgment motions on claims for damages and injunctive relief. In announcing the ban, the Director of the Department stated that "pending inmate litigation, both locally and nationally on the issue of second hand smoke are concerns that must be addressed." The inmate sought fees and expenses which were granted by the district court. The employees appealed and the appeals court affirmed. The appeals court held that the inmate was the prevailing party, affirming the district court award of $8,346 in attorney fees and $2,952 expenses. The court also found that the employees were not deliberately indifferent to the inmate's serious medical needs, as required to establish a § 1983 claim. The court noted that the employees took action to house the inmate in a smoke-free cell and took reasonable steps to ensure that the inmate's cellmate observed the no-smoking rule. (Lincoln Correctional Center, Nebraska)

1998

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

Blissett v. Casey, 147 F.3d 218 (2nd Cir. 1998). A prisoner brought a pro se civil rights action against prison officials. After a pro bono counsel was appointed and later withdrew, the prisoner retained the services of two other attorneys and obtained a judgment. The attorneys moved for the award of fees under § 1988 but prison officials opposed the application, contending that fee limitations contained in the Prison Litigation Reform Act (PLRA) had to be applied. The district court ruled that PLRA was not applicable because the attorneys performed work before the PLRA became effective and that PLRA's fee limitations did not have to be applied to all awards or fees made after the effective date. The appeals court affirmed. (New York)

U.S. District Court
42 U.S.C.A. Sec. 1988
PREVAILING PARTY

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

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

Doe By and Through Doe v. Washington County, 150 F.3d 920 (8th Cir. 1998). A juvenile brought a § 1983 action against a county and a sheriff alleging that he was beaten, raped and tortured by other pretrial detainees when he was detained in the county jail. The district court jury awarded $8,000 in compensatory damages to the juvenile and the district court awarded $34,824 in attorney fees. The juvenile alleged that rough-housing among the five juvenile prisoners in a 200-square-foot holding cell turned dangerous and he asked to be moved to

a different cell. He was moved for a few hours, but he was taken back to the holding cell by another guard who told the other occupants that the juvenile was a "snitch" and they should "handle it." Over the following five days the juvenile was subjected to unrelenting abuse, torture and humiliation. The county appealed and the appeals court affirmed. The appeals court decided that the juvenile was not a "prisoner" at the time he filed suit and therefore the Prison Litigation Reform Act (PLRA) did not apply to his case so as to limit an award of attorneys' fees. (Washington County Detention Center, Arkansas)

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

Hadix v. Johnson, 143 F.3d 246 (6th Cir. 1998). In separate prison reform class actions, plaintiffs filed fee petitions for compliance monitoring and in one action sought fees in connection with three appeals. The defendants claimed that the fee limitation provisions of the Prison Litigation Reform Act (PLRA) applied. The district court applied the PLRA limitations to fees earned after PLRA's enactment but not to those earned before. The appeals court held that attorney fee limitations imposed by PLRA did not apply to the fee petitions, regardless if the work was performed before or after PLRA's enactment date. The appeals court held that the plaintiffs were not entitled to attorney fees in connection with their unsuccessful appeal and petition for writ of certiorari related to an attempt to prevent the defendants from eliminating the provision of legal assistance on parental rights matters. (Michigan Department of Corrections)

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

Inmates of D.C. Jail v. Jackson, 158 F.3d 1357 (D.C.Cir. 1998). Attorneys who were monitoring compliance of a jail with orders issued in inmate civil rights actions sought the award of fees for work performed after passage of the Prison Litigation Reform Act (PLRA). The district court awarded the fees at market rates, finding PLRA inapplicable. The appeals court vacated and remanded, finding that the PLRA's cap on attorney fee awards applied to work performed after its effective date. (District of Columbia)

1999

U.S. Appeals Court
PREVAILING PARTY

Barnes v. Broward County Sheriff's Office, 190 F.3d 1274 (11th Cir. 1999). An applicant for the position of detention deputy brought an action against a county sheriff's office under the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA). The district court entered summary judgment in favor of the applicant on his claim that pre-employment psychological testing violated ADA and permanently enjoined the county from continuing such a practice. The district court entered summary judgment in favor of the sheriff's office on the remaining claims and denied the applicant's request for attorney fees. The applicant appealed the attorney fee decision and the appeals court affirmed, finding that the applicant was not entitled to attorney fees absent evidence that the discontinuation of psychological testing affected his relationship with the county at the time the judgment was rendered, or that he directly benefited from the injunction. (Broward County Sheriff's Officer, Florida)

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

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. The appeals court also ruled that the fee cap imposed by the Prison Litigation Reform Act (PLRA) applied to the attorneys appointed for the inmate after PLRA's enactment, even though the action was filed before PLRA's enactment. (Green Haven Correctional Facility, New York)

U.S. District Court
42 U.S.C.A. § 1983
PARTIAL SUCCESS
PLRA-Pris. Litigation Reform Act

Collins v. Montgomery Cty Bd. Of Prison Inspectors, 176 F.3d 679 (3rd Cir. 1999). A state inmate brought a § 1983 action alleging violation of his constitutional rights while he was confined. The district court entered judgment partially in favor of the inmate after a jury trial and awarded attorney's fees to the prisoner. The appeals court held that the Prison Litigation Reform Act (PLRA) provisions could be applied to set a maximum amount for hourly attorneys' fees based on the amount of the judgment, but that the PLRA provision that required a portion of the judgment obtained by the prisoner to be applied to the payment of attorney fees would not be applied retroactively. A divided appeals court held that a cap on the amount of fees that was based on the amount of the judgment did not violate equal protection principles. The district court had awarded the prisoner $15,000 in compensatory damages and $5,000 in punitive damages on his claim arising out of an attack on him by a guard dog. (Montgomery County Correctional Facility, Pennsylvania)

U.S. District Court
PREVAILING PARTY

D.M. v. Terhune, 67 F.Supp.2d 401 (D.N.J. 1999). Inmates brought a class action suit against correctional officials challenging the adequacy of mental health treatment. Following the

submission of a proposed settlement agreement the district court held that the settlement was fair and that the plaintiffs qualified as the "prevailing party" for the purposes of an attorney fee award. The settlement consisted of: (1) amendment to the Department of Corrections [DOC] disciplinary regulations, (2) a mental health treatment plan, (3) a statement on new policies and procedures, (4) the funding, monitoring and enforcement of the settlement, and (5) no admission as to the liability of the defendants. According to the settlement, all new prisoners will receive a mental health assessment within 72 hours of arrival. The Department agreed to pay attorney fees in the amount of $1,220,000 to resolve all fees and costs incurred by the prisoners' attorneys. (New Jersey Department of Corrections, Correctional Medical Services [CMS], and Correctional Behavioral Services, Inc. [CBS])

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

Madrid v. Gomez, 190 F.3d 990 (9th Cir. 1999). After numerous constitutional violations were found to exist, prisoners who had sued prison officials were ordered to collaborate with the prison officials to develop and implement a remedial plan. The district court awarded attorney fees to the prisoners for legal services rendered during the remedial phase of the case and the prison officials appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the attorney fee limitations of the Prison Litigation Reform Act (PLRA) did not apply to attorney fee awards that were entered after PLRA's enactment but which covered services performed prior to its enactment. The court held that PLRA's limitations did apply to services rendered after its enactment, and that PLRA satisfied the equal protection component of the Fifth Amendment. (Pelican Bay State Prison, California)

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

Martin v. Hadix, 119 S.Ct. 1998 (1999). After prevailing in their § 1983 suit challenging their conditions of confinement, prisoners filed fee petitions for compliance monitoring. The district court applied the Prison Litigation Reform Act (PLRA) to limit fees earned after PLRA's enactment, but not to limit those earned before. The appeals court affirmed in part and reversed in part, holding that PLRA's fee limitation did not apply to cases pending on its enactment date. The United States Supreme Court affirmed in part and reversed in part, holding that PLRA limits attorney fees for postjudgment monitoring services performed after PLRA's effective date, but does not limit the fees for monitoring before that date. (Michigan Department of Corrections)

U.S. District Court
DETERMINATION

McGlothlin v. Murray, 54 F.Supp.2d 629 (W.D.Va. 1999). The issue of whether to reduce an attorney fee award against a plaintiff prison inmate who brought a frivolous § 1983 action against prison officials and a prison chaplain was remanded by the appeals court. The district court held that reduction of the award from $28,719.25 to $900 was appropriate in light of the plaintiff's inability to pay and out of a concern that a large award would discourage other inmates who had viable claims. The plaintiff inmate had alleged that the prison officials and the prison chaplain discriminated against him because of his Islamic religion. (Dillwyn Correctional Center, Virginia)

U.S. Appeals Court
PLRA-Prison Litigation Reform Act
PARTIAL SUCCESS DETERMINATION

Montcalm Pub. Corp. v. Commonwealth of Virginia, 199 F.3d 168 (4th Cir. 1999). A publisher who was granted leave to intervene in a suit challenging prison regulations that prevented access to sexually explicit magazines moved to recover attorney fees. The district court granted the fee award, subject to the fee limitations of the Prison Litigation Reform Act (PLRA). The publisher appealed and the appeals court affirmed in part and reversed and remanded in part. The appeals court held that limits on attorney fees in PLRA govern the fees sought by a non-prisoner who intervenes in a case originally brought by a prisoner. The appeals court also held that the district court did not abuse its discretion in reducing the fee award to reflect lack of success and other factors. (Keen Mountain Correctional Center, Virginia)

U.S. District Court
ALIEN
DENIAL OF BAIL

Rowe v. I.N.S., 45 F.Supp.2d 144 (D.Mass. 1999). An alien sought a writ of habeas corpus on the ground that he was being detained without bond in violation of his constitutional rights. The district court denied the petition, finding that detention without bond pending deportation was not an abuse of discretion. The court held that decisions to deny bond are within the discretion of the Attorney General and can be judicially overridden only when the alien carries his "heavy burden" to establish an abuse of that discretion. The court found the denial of bond reasonable in light of the alien's conviction for assault and battery and a prior domestic abuse restraining order. (Immigration and Naturalization Service)

U.S. District Court
ATTORNEY FEES

Turner v. Wilkinson, 92 F.Supp.2d 697 (S.D.Ohio 1999). An inmate and her husband brought an action seeking declaratory and injunctive relief to require prison officials to allow the husband to attend the birth of the couple's child. The district court entered a temporary restraining order and the husband was permitted to be present during the birth of his child. The plaintiffs moved for attorney fees and the court held that they were entitled to them under the catalyst theory. The husband had given a newspaper interview about prison conditions and the court found that the prison had violated equal protection because similarly-situated inmates had been allowed to have their spouses present during the birth of their children. (Franklin Pre-Release Center, Ohio)

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

Walker v. Bain, 65 F.Supp.2d 591 (E.D.Mich. 1999). An inmate moved for an attorney fee award under § 1988 after recovering damages totaling $426 in an action against correctional officers. The inmate sought $36,046 in attorney fees, but under the provisions of the Prison Litigation Reform Act (PLRA) the attorney fees would be limited to $629, which is 150% of the damages that were awarded. The district court ruled that the provision of PLRA that limited attorney fees violated the equal protection rights of the inmate. (Michigan Department of Corrections)

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

Webb v. Ada County, Idaho, 195 F.3d 524 (9th Cir. 1999). After a plaintiff had prevailed on several issues in a § 1983 class action challenging jail conditions, the district court awarded only a percentage of the attorney fees requested. The appeals court affirmed in part and remanded in part. The appeals court held that attorney fees for postjudgment monitoring services performed after the effective date of the Prison Litigation Reform Act (PLRA) were subject to the limitations contained in the Act. The appeals court also held that the plaintiff was not the prevailing party with regard to issues relating to one of the defendants, a psychologist. (Ada County Jai, Idaho)

2000

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

Boivin v. Black, 225 F.3d 36 (1st Cir. 2000). After a pretrial detainee prevailed in a civil rights action against a correctional officer the district court granted his application for attorney fees and the officer appealed. The appeals court vacated and remanded. The appeals court held that the provision of the Prison Litigation Reform Act (PLRA) that caps defendants' liability for attorney fees when a prisoner secures a monetary judgment, at 150% of the judgment, applies to awards of nominal damages. The appeals court found that as construed, the statute does not violate due process because when linked with the requirement that the prisoner contribute part of the award to payment of the fee, it could conceivably inhibit prisoners and their counsel from filing frivolous or low-value suits. The detainee had been awarded only $1 in nominal damages for an incident in which he lost consciousness after being locked in a restraint chair, his mouth covered by a towel. (Maine Correctional Institute, Warren, Maine)

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

Hadix v. Johnson, 230 F.3d 840 (6th Cir. 2000). Prisoners who had prevailed in a § 1983 action challenging their conditions of confinement filed fee petitions for compliance monitoring. The district court applied the Prison Litigation Reform Act (PLRA) limitations to fees earned after PLRA's enactment, but not to fees earned before. The appeals court affirmed in part and reversed in part. The case was heard by the United States Supreme Court and was affirmed in part, reversed in part, and remanded. On remand, the appeals court held that the PLRA provision that imposes a cap on attorney fees recoverable by prisoners in civil rights litigation did not violate equal protection. (Michigan Department of Corrections)

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

Janes v. Hernandez, 215 F.3d 541 (5th Cir. 2000). A traffic offender sued a county to recover for alleged violation of his civil rights based upon a sheriff's policy of confining all manner of arrestees, including those with prior felony records, in one large cell. The district court entered judgment in favor of the offender and awarded attorney fees. The appeals court affirmed, finding that the sheriff, as the county policymaker, did not have to know that specific felons and other inmates with whom the traffic offender was confined posed a risk of harm to him, in order to be liable for violation of the offender's civil rights. The appeals court found that the section of the Prison Litigation Reform Act (PLRA) that limited attorney fees that may be awarded in suits by inmates did not reply to the offender, who was not a prisoner when his complaint was filed. (Bastrop County Jail, Texas)

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

Lozeau v. Lake County, Mont., 98 F.Supp.2d 1157 (D.Mont. 2000). Jail inmates filed an action to enforce the provisions of a consent decree that governed prison conditions. After the suit was resolved by a settlement, the inmates sought attorney fees. The district court held that the inmates were entitled to attorney fees even though the case was settled because the inmates' suit was the catalyst for improved compliance. The court ruled that the fees of an out-of-state attorney with special civil rights expertise would be allowed at a higher hourly rate than the allowable fees of local counsel ($80 as opposed to $45/hour). The consent decree addressed issues of staffing, medical record keeping, lighting, plumbing and fire safety. (Lake County Detention Center, Montana)

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

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

because the jury had sent a clear signal, through its inclusion of $3,000 in punitive damages, that the defendant correctional officers should be punished. (Ross Correctional Institute, Ohio)

U.S. District Court
ATTORNEY FEE

Waterman v. Farmer, 84 F.Supp.2d 579 (D.N.J. 2000). Two prisoners at a facility for sex offenders who had exhibited repetitive and compulsive behavior challenged a state law that restricted their access to pornographic materials. The district court granted a permanent injunction prohibiting prison officials from enforcing the law but the appeals court reversed. The district court denied the award of attorney fees for the prisoners, finding that denial of the catalyst basis for fees recovery did not violate their equal protection rights. (Adult Diagnostic and Treatment Center, New Jersey)

2001

U.S. District Court
PARTIAL SUCCESS

Booth v. Barton County, KS, 157 F.Supp.2d 1178 (D.Kan. 2001). An inmate and a former inmate brought an action seeking injunctive relief under § 1983, alleging unconstitutional conditions of confinement at a county jail. The district court granted summary judgment in favor of the defendants. The court found that the former inmate's claims, which sought only injunctive relief, were moot since the inmate had been released and was no longer a prisoner. The court refused to let the female inmate raise clams of gender-based unequal treatment at the summary judgment stage of trial because she failed to introduce the claims in her complaint, or at the pretrial conference. The female inmate had asked permission to allege that the jail had an insufficient number of female officers to provide equal exercise to female inmates, and that the jail's male-only trustee policy resulted in more exercise time for male inmates. The jail was allegedly designed to accommodate 19 inmates but had a policy of housing up to 72 inmates. (Barton County Jail, Kansas)

U.S. District Court
SEC. 1988

Estate of Reynolds v. Greene County, 163 F.Supp.2d 890 (S.D.Ohio 2001). The estate of a prisoner who died of pneumonia several days after being transferred from a county jail to a state prison brought state court claims against the county and jail officials alleging that he was denied adequate medical care. The case was removed to federal court. The district court granted summary judgment in favor of the defendants and the defendants moved for the award of attorney fees. The district court declined to award attorney fees, finding that the action was neither frivolous nor without foundation. (Greene County Jail, Ohio)

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

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 Corr'l Ctr, Missouri)

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

Morrison v. Davis, 195 F.Supp.2d 1019 (S.D.Ohio 2001). A state inmate filed a § 1983 action alleging he had been beaten by a corrections officer. After a jury verdict in his favor and the award of attorney fees, he moved to alter or amend the judgment. The district court held that, under the provisions of the Prison Litigation Reform Act (PLRA), the maximum hourly rates were limited to 150% of the $70 rate for in-court time, and $50 per hour for out-of-court time, even though a Judicial Conference had approved an hourly rate increase, because the increase had not been implemented due to the unavailability of funds. (Ross Correctional Institute, Ohio)

U.S. District Court
ATTORNEY FEES
PLRA-Prison Litigation Reform Act

Spruytte v. Hoffner, 197 F.Supp.2d 931 (W.D.Mich. 2001). After receiving a judgment in their favor, prisoners who challenged their transfer to other facilities filed a motion for fees and costs. The district court held that the prisoners were not required to show that the officials' actions shocked the conscience. The court found that any attorney fee award was limited to 150 percent of the total judgment awarded to the inmates, even though they prevailed on all claims. Under the provisions of the Prison Litigation Reform Act (PLRA) the court awarded the prisoners $8,450 in attorney fees and $3,474 in costs. (Michigan Department of Corrections)

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

Volk v. Gozalez, 262 F.3d 528 (5th Cir. 2001). A state prison inmate who brought a civil rights suit against a prison warden and correctional officers and was awarded $2.00 in nominal damages, in addition to declaratory and injunctive relief, sought attorney fees, costs and expenses. He was awarded half of his requested attorney and legal assistant fees and $658 in costs. On appeal the judgment was affirmed in part, vacated in part, and remanded for redetermination of the fee award for work done after the effective date of the Prison Litigation Reform Act (PLRA). The district court applied the PLRA fee cap, which limits the defendant's liability to 150% of the damages award and the inmate appealed. The appeals court held that

application of the $3 fee cap was appropriate for post-PLRA attorney and legal assistant fees, and was enforceable. (Texas)

2002

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

Carruthers v. Jenne, 209 F.Supp.2d 1294 (S.D.Fla. 2002). A consent agreement was entered, calling for improvements in conditions of county jails. The county ceased payment of attorney fees and compliance monitoring costs, relying on a provision of the Prison Litigation Reform Act (PLRA) that automatically stayed enforcement of prospective relief under consent decrees. The district court ordered the county to pay the fees, finding that the PLRA stay provision only applied to prospective relief engendered within a consent decree, not to the entire decree. The court noted that the stay provision did not bar the payment of attorney fees nor did it bar payment of monitoring fees. (Broward County Jail, Florida)

U.S. District Court
ATTORNEY FEES LIMITATION

Ciaprazi v. County of Nassau, 195 F.Supp.2d 398 (E.D.N.Y. 2002). An inmate filed a § 1983 action alleging that county correction officers used excessive force against him. After a jury awarded nominal damages on one count, the inmate applied for attorney fees and costs. The district court held that the inmate was the "prevailing party" but that the award of attorney fees was not warranted, where the inmate recovered only $1 in nominal damages against one officer, the jury found in favor of the other officer, the case did not involve a significant legal issue, and there was no award of injunctive relief. (Nassau County Correctional Center, New York)

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

Cody v. Hillard, 304 F.3d 767 (8th Cir. 2002). A class of state prisoners who had brought a § 1983 action against state prison officials moved for the award of attorney fees after a private settlement agreement was entered, dismissing the case without prejudice. The district court granted the motion and the appeals court affirmed. The appeals court held that the class was entitled to a fee award for three separate phases of the litigation and that the award of fees was not banned by the Prison Litigation Reform Act (PLRA) of 1996. The court also held that the private settlement agreement did not bar the award of attorney fees. The court found that the prisoners were the prevailing party for the purpose of an attorney fee award under § 1988, where they had obtained a court-ordered consent decree that governed the operation of a state prison for twelve years. The appeals court affirmed the district court award of fees in the amount of $106,877. (South Dakota State Penitentiary)

U.S. Appeals Court
ATTORNEY FEES

Fairley v. Luman, 281 F.3d 913 (9th Cir. 2002). An arrestee who was detained by a police officer and held for 12 days on outstanding warrants for the arrest of his twin brother brought a § 1983 action alleging false arrest and violation of due process. The district court entered judgment upon jury verdict in favor of police officer defendants, but against the city defendants in the amount of $11,250, and awarded attorney fees in the amount of $92,211 to the arrestee. The city appealed and the appeals court affirmed, finding that the city's detention of the arrestee deprived him of a significant liberty interest and that the city's warrant procedures constituted "policies" for the purposes of § 1983. The court noted that neither a fingerprint comparison nor a Department of Motor Vehicles check was completed during the arrestee's 12 days of detention and that the arrestee continuously protested the mistaken identity. He was only released after he filed a citizen's complaint from jail. (City of Long Beach, California)

U.S. Appeals Court
ATTORNEY FEES

Hunt v. State of Missouri, Dept. of Corrections, 297 F.3d 735 (8th Cir. 2002). Female nurses who had been assigned by a temporary staffing agency to provide nursing services to state prisons, brought claims against the corrections department under Title VII. The district court entered judgment in favor of the nurses on the retaliation claims and awarded them attorney fees. The nurses appealed and the appeals court affirmed the district court decision. The appeals court held that the nurses were employees of the department, not independent contractors, and thus had standing to sue under Title VII, noting that the existence of a contract referring to a party as an independent contractor does not end the inquiry into whether the individual employee is protected by Title VII. According to the court, a person may have two or more employers for the same work, for the purposes of conferring standing to sue under Title VII. The court noted that the nurses did not work independently and were constantly under the supervision and scrutiny of corrections officials and employees, and although they were paid directly by the temporary staffing agencies, the nurses did no other work for the agency other than the prison work. The appeals court found that the nurses were constructively discharged, where their complaints about their treatment on the job were answered with threats to their well-being, threats of termination, efforts to obstruct their work, additional unnecessary and unreasonable job requirements, and general harassment. The court held that the award of $136,967 in attorney fees was warranted, even though the nurses did not prevail on their sexual harassment claims. (Jefferson City Correctional Center, Missouri)

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

Johnson v. Breeden, 280 F.3d 1308 (11th Cir. 2002). A state prisoner brought a § 1983 action against corrections officers alleging that they used excessive force on him in violation of the Eighth Amendment. The district court entered judgment for the prisoner and awarded $25,000 in compensatory damages, $45,000 in punitive damages and attorney fees and expenses in the

amount of $85,268. The officers appealed and the appeals court affirmed the award of compensatory damages but vacated the punitive damages and attorney fee awards and remanded the case for determination. The appeals court held that the action was a "civil action with respect to prison conditions" and was therefore subject to limitation on prospective relief under the Prison Litigation Reform Act (PLRA). The appeals court also held that the application of the lodestar method in calculating the attorney's fee award was an abuse of discretion. (Phillips Correctional Institution, Georgia)

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

Siripongs v. Davis, 282 F.3d 755 (9th Cir. 2002). A prisoner brought a § 1983 action against a governor and prison warden, alleging violation of his due process rights during clemency proceedings. The district court issued a Temporary Restraining Order preventing the prisoner's execution, and following denial of a preliminary injunction denied the prisoner's request for attorney fees. The prisoner appealed and the appeals court affirmed. The appeals court held that the award of attorney fees was barred by the Prison Litigation Reform Act because the fees were not incurred in proving the actual violation of the prisoner's rights. (California)

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

Webb v. Ada County, 285 F.3d 829 (9th Cir. 2002). A plaintiff who had prevailed on several issues in a § 1983 class action challenging jail conditions appealed after he was awarded only a percentage of requested postjudgment attorney fees. The appeals court affirmed in part and remanded in part, and the district court again awarded only a percentage of the fees requested. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the Prison Litigation Reform Act's (PLRA) attorney rate cap applied to all postjudgment fees incurred after its effective date, including fees related to postjudgment motions for contempt and discovery sanctions. The appeals court found that the baseline hourly rate of $75 that had been approved but not yet Congressionally funded, applied for PLRA purposes. The appeals court held that the district court's use of a $125 hourly rate for fees incurred prior to the adoption of PLRA was within the court's discretion. (Ada County Jail, Idaho)

2003

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

Armstrong v. Davis, 318 F.3d 965 (9th Cir. 2003). Prisoners who had prevailed on their claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA) moved for the award of attorney fees. The district court entered an award and the defendants appealed. The appeals court affirmed. The appeals court held that the prisoners were entitled to the award of prevailing party attorney fees, not only for work that their counsel performed in litigation between the prisoners and the defendants, but also for work that their counsel performed in separate litigation involving identical issues. The court found that the attorney fee award limitations of the Prison Litigation Reform Act (PLRA) did not limit the fee award to the prisoners to the extent that such fees were sought under the attorney fee provisions of ADA and RA. (California Department of Corrections, California Board of Prison Terms)

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

Christina A. Ex Rel. Jennifer A. v. Bloomberg, 315 F.3d 990 (8th Cir. 2003). A class of juvenile inmates sued the secretary of a state corrections department and the superintendent of a state training school, alleging First and Fourteenth Amendment violations and violation of the Individuals with Disabilities Education Act (IDEA). The parties settled the action and the inmates moved for the award of attorney's fees and expenses. The district court granted fees and expenses and the defendants' appealed. The appeals court reversed, finding that the state training school qualified as a correctional facility under the fee-limiting provisions of the Prison Litigation Reform Act (PLRA) and that the class of juvenile inmates was not a "prevailing party" because the agreement approved by the district court did not provide for any contempt remedies. (State Training School at Plankinton, South Dakota)

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

Jackson v. State Bd. of Pardons and Paroles, 331 F.3d 790 (11th Cir. 2003). A state prisoner who had successfully pursued a civil rights action challenging denial of a parole hearing, filed a motion for the award of attorney fees, which the district court granted in part and denied in part. The appeals court affirmed, finding that the phrase "any action brought by a prisoner" as used in the Prison Litigation Reform Act (PLRA), restricting attorney fee awards, encompasses all lawsuits filed by a prisoner, and is not restricted to suits challenging prison conditions. The court also held that the PLRA statutory language was sufficiently broad to permit attorney fees to be awarded on the litigation of the fee question. (State Board of Pardons and Paroles, Georgia)

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

Lynn v. Maryland, 295 F.Supp.2d 594 (D.Md. 2003). An arrestee sued state prison officials alleging excessive force. The district court entered judgment in the arrestee's favor on a single claim against a single defendant and awarded damages of approximately $2,500. The arrestee's counsel sought attorney fees of approximately $130,000 and costs of $12,000. The district court reduced the requested attorney fee award to $25,000, and costs to $2,158, finding the reduction was warranted by the counsel's unnecessary prolonging of the action and other factors. The court held that the arrestee could not recover the cost of hiring an expert whose testimony was excluded. The court noted that the counsel prolonged the trial with inartful questioning and

extensive examination of witnesses on immaterial points. The arrestee had been visiting his son at a state correctional facility when he was subjected to an unconstitutional search and arrest as the result of a false alert by a drug dog. (Maryland)

2004

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

Hightower v. Nassau County Sheriff's Dept., 343 F.Supp.2d 191 (E.D.N.Y. 2004). A pretrial detainee brought a civil rights action against a county sheriff's department and corrections officers, alleging excessive use of force. A jury entered a verdict in favor of the inmate and awarded damages. The damage award was reduced to $165,000 and the detainee's attorney fees were calculated. The defendants moved for reconsideration of the attorney fee award, under the provisions of the Prisoner Litigation Reform Act (PLRA). The district court held that it had miscalculated the attorney fee award and entered a new award. The court held that PLRA limited the hourly rate to 150% of the current rate allowed under the Criminal Justice Act, and required the prisoner to pay 25 percent of his damages award to cover a portion of the award of attorney fees. (Nassau County Sheriffs Department)

U.S. District Court
42 U.S.C.A Sec. 1988 DETERMINATION
PLRA-Prison Litigation Reform Act

LaPlante v. Pepe, 307 F.Supp.2d 219 (D.Mass. 2004). A state prisoner filed a § 1983 action, alleging that prison officials had interfered with his right of access to courts by denying him physical access to the prison's law library. After the court entered summary judgment in favor of the inmate, the prisoner's counsel applied for attorney fees. The counsel requested $125,533 in fees and costs; the court awarded $99,981. The court found that the very high number of hours spent by the law firm representing the inmate was not unreasonable, even though the firm used junior attorneys to staff the case, where prison officials refused to concede a violation even when it was apparent in the face of a "crystal clear settlement agreement," refused to settle the case, and raised multiple insubstantial arguments. The court awarded hourly rates of $300 per hour for a litigation partner, $275 per hour for a senior litigation associate, $175 per hour for a mid-level litigation associate and $120 per hour for a junior litigation associate. The court did not apply the limitations of the Prison Litigation Reform Act (PLRA) because the settlement agreement provided that the fees would be awarded under § 1988. (MCI-Cedar Junction, Massachusetts)

U.S. Appeals Court
ATTORNEY FEES

Lynch v. Leis, 382 F.3d 642 (6th Cir. 2004). A detainee joined a class action that challenged a county policy that allowed prisoners to make only collect telephone calls, which in combination with the public defender's policy of refusing collect calls operated to deny pretrial detainees their right to counsel. The district court found a Sixth Amendment violation of the pretrial detainees' rights and ordered an injunction. The county complied with the injunction. The district court awarded attorney fees to the detainee and the defendants appealed. The appeals court reversed, finding that the detainee lacked the standing to join the class action suit and thus was not entitled to attorney fees. (Hamilton County Justice Center, Ohio)

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

Riley v. Kurtz, 361 F.3d 906 (6th Cir. 2004). A prisoner brought an action against a corrections officer, alleging that his legal mail was opened by the officer outside of the prisoner's presence, in violation of both prison policy and his First Amendment rights. The prisonern also alleged that the officer wrote a false misconduct report against him, in violation of the Eighth Amendment. A jury entered a verdict in favor of the prisoner, the district court awarded attorney fees and the officer appealed. The appeals court reversed in part and ordered remittitur to reduce a punitive damages award. On remand, the district court entered an amended judgment and awarded attorney fees. The officer appealed, challenging the attorney fees awards. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner was the prevailing party within the meaning of § 1988 and the prisoner, who prevailed on appeal, was entitled to attorney fees for the appellate work under the Prison Litigation Reform Act (PLRA). The court found that the limitation provisions of PLRA did not violate equal protection. (Michigan)

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

Torres v. Walker, 356 F.3d 238 (2nd Cir. 2004). A state prison inmate brought a § 1983 action alleging excessive force. The parties agreed on a settlement, which included $1,000 in damages and unspecified attorney fees. The district court awarded attorney fees of 150%, or $1,500, according to the Prison Litigation Reform Act (PLRA). The inmate appealed. The appeals court vacated and remanded, finding that the PLRA attorney fee cap did not apply to a "so-ordered" stipulation of dismissal. The court noted that there was no actual "monetary judgment" and that the settlement stated that attorney fees were "not [to be] calculated as a percentage of the total amount [of the settlement offer]." (Auburn Correctional Facility, New York)

2005

No Cases

U.S. District Court
ATTORNEY FEES

Bynum v. District of Columbia, 412 F.Supp.2d 73 (D.D.C. 2006). Persons who had been, were, or would be incarcerated by the District of Columbia Department of Corrections brought a § 1983 class action challenging the Department's policy of conducting suspicionless strip searches of inmates who were declared releasable after their court appearances, and challenging alleged over-detentions. The district court preliminarily approved a proposed settlement. Following a final approval hearing, the district court held that final approval was warranted and that the allocation of a sum for distribution to all class members who submitted claims was a fair method of distribution. The court held that the distribution fund of $12 million was very favorable, especially in view of the low number of opt-outs and objectors. The court found that there was no collusion between the parties or their counsel and that the settlement comported with the rule governing class actions and with due process requirements. The court found that the attorney fee award of 33% of the settlement fund, or $4 million, was reasonable, noting that counsel had engaged in protracted efforts over four years to obtain the outstanding settlement in both monetary and injunctive terms, the case was complex and involved novel issues, the case carried a serious risk of lack of success, and the settlement met with a high level of class satisfaction. The court defined the "Over-Detention Injunctive Relief Class" as: (a) Each person who has been, is or will be incarcerated in any District of Columbia Department of Corrections facility beginning in the three years preceding the filing of the action on or about May 16, 2002 up to and until the date this case is terminated; and (b) who was not released, or, in the future will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired. (District of Columbia Department of Corrections)

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

Ginest v. Board of County Com'rs of Carbon County, 423 F.Supp.2d 1237 (W.D.Wyo. 2006). County jail inmates filed a motion for an award of attorney fees and expenses after obtaining a consent decree in a § 1983 class action against a county and sheriff in his official capacity, for deliberate indifference to their medical needs, and a contempt order against the defendants. The district court held that: (1) the class counsel for the inmates was entitled to attorney fees for time and effort spent in monitoring compliance by the county and its sheriff with the remedial plan; (2) the Prison Litigation Reform Act (PLRA) did not preclude an award of attorney fees to the class counsel; (3) the counsel would be awarded a 25% fee multiplier or enhancement; and (4) the counsel was entitled to the award of expenses for his travel to Wyoming to review medical records and perform other activities on behalf of the inmates. (Carbon County, Wyoming)

U.S. District Court
PREVAILING PARTY

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. (Montgomery County Jail, New York)

U.S. Appeals Court
ATTORNEY FEE

Patterson v. Balsamico, 440 F.3d 104 (2nd Cir. 2006). An African-American former employee of a county sheriff's department brought an action against another corrections officer, alleging the existence of a racially discriminatory hostile work environment and the intentional infliction of emotional distress. After a jury trial, the district court awarded the former employee nominal damages on the hostile work environment claim, $100,000 on the emotional distress claim, and $20,000 in punitive damages. The court denied the corrections officer's motion for a new trial and awarded the former employee attorney fees. The parties appealed. The court of appeals affirmed in part, and vacated and remanded in part. The appeals court held that the district court did not abuse its discretion when, pursuant to New York law, it declined to reduce compensatory damages of $100,000 awarded to the plaintiff on his claim for intentional infliction of emotional distress, arising from an assault in which the officer and others sprayed the plaintiff with mace, covered him with shaving cream, and taunted him with racial slurs. The court noted that the plaintiff had testified as to his humiliation, embarrassment, and loss of self-confidence, as well as to his sleeplessness, headaches, stomach pains, and burning in his eyes

from the use of mace. The appeals court found that the punitive damages award of $20,000 did not exceed the maximum permissible amount considering that this was a thoroughly reprehensible incident, particularly in light of its racial motivation, and that the punitive damages award represented a relatively small fraction of $100,000 compensatory damages awarded on the emotional distress claim. The court noted that the officer against whom the award was made should have appreciated the gravity of the racially motivated assault on a fellow officer and should have understood that such conduct could have adverse economic consequences. But the appeals court concluded that the $20,000 damage award was excessive in light of the personal finances of the defendant corrections officer, who earned an annual salary of approximately $37,632, was married and had two children. The court found that an award of no more than $10,000 would provide sufficient punishment and deter future conduct. The court remanded the case for a new trial on punitive damages, unless the plaintiff agreed to remit the portion of the punitive damages award that exceeded $10,000. The plaintiff alleged that he had been subjected to a racially discriminatory hostile work environment and that his employment had been terminated because of his race. He alleged that he heard fellow employees use racial slurs and make disparaging remarks about African-Americans on approximately 12 occasions during his first three months of employment. (Oneida County Correctional Facility, New York)

U.S. Appeals Court
PLRA- Prison Litigation Reform Act
PREVAILING PARTY
LIMITATION

Pearson v. Welborn, 471 F.3d 732 (7th Cir. 2006). An inmate brought an action against prison personnel, alleging retaliation in violation of the First Amendment. The district court entered judgment upon jury verdict in favor of the inmate. Inmate appealed the court's refusal to award attorney fees and declaratory relief, and a prison warden and social worker cross-appealed. The appeals court affirmed. The appeals court held that the inmate's oral complaints to prison personnel about prison conditions, including the use of shackles in group therapy and denial of yard time to prisoners in a pre-transfer unit, related to matters of public concern and were designed to effect a change in prison policy, and thus, they were protected by the First Amendment. The court held that the inmate, who was awarded only nominal damages under the Prison Litigation Reform Act (PLRA) in his action against prison personnel, was not entitled to an attorney fee award greater than 150% of the nominal damages based on his claim for declaratory judgment, that his punishment by personnel was illegal. The court noted that the only relief the inmate secured was nominal damages, and since the inmate had already been transferred to another facility, a declaratory judgment would have been largely duplicative of the jury's verdict concluding that personnel had retaliated against inmate. (Tamms Correctional Center, Illinois)

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

Robbins v. Chronister, 435 F.3d 1238 (10th Cir. 2006). An arrestee was awarded nominal damages in his § 1983 action against a police officer who broke the arrestee's car window when trying to make an arrest. The district court awarded attorney's fees and the officer appealed. The appeals court affirmed. On rehearing en banc, the appeals court reversed and remanded. The court held that the arrestee was entitled to an attorney fee award that was limited to 150% of the money judgment, as provided by the Prison Litigation Reform Act. The arrestee had been awarded $1 in nominal damages, and court held that the PLRA provision that limited fee awards to 150% of the money judgment was "not absurd." (Kansas City, Missouri)

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

Siggers-El v. Barlow, 433 F.Supp.2d 811(E.D.Mich. 2006). A state inmate filed a § 1983 action alleging that a prison official transferred him in retaliation for his exercising his First Amendment rights. After a jury verdict in the inmate's favor, the official filed a motion for a new trial, and the inmate moved for costs and attorney fees. The district court held that the Civil Rights of Institutionalized Persons Act (CRIPA) that prohibited inmates from recovering mental or emotional damages in the absence of a the physical injury, did not bar the inmate's claim for emotional damages and that evidence supported the award of punitive damages. The court applied only $1 of the inmate's damages award to his attorney fee award. The court noted that a jury may be permitted to assess punitive damages in a § 1983 action when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless disregard or callous indifference to the federally protected rights of others. According to the court, the jury's award of punitive damages against the prison official was supported by evidence that the official transferred the inmate in retaliation for the inmate's exercise of his First Amendment free speech rights in complaining to the official's superiors about the official's misconduct, even though the official was aware that the transfer would prevent the inmate from seeing his attorney, from paying his attorney, and from seeing his emotionally-disabled daughter. The court ruled that the inmate was entitled to reimbursement for the work of law students in calculating his attorney fee award, even though the law students were supervised by an attorney and obtained course credit for their work. The inmate had been represented by the law school's clinical law program, and the law students participated as competent and professional attorneys throughout discovery, dispositive motions, interlocutory appeal, and trial. According to the court, in calculating the attorney fee award, the rate of $85/hour, rather than the $25/hour proposed by the defendant, was the appropriate billing rate for time spent by law students on the case, where affidavits from local attorneys stated that prevailing billing rates for the work of summer associates and interns was between $100 and $130 per hour. The court applied only $1

of the inmate's $219,000 damages award to the $90,875 in attorney's fees awarded to the plaintiff, even though the Prison Litigation Reform Act (PLRA) prescribed application of up to 25% of such damages awards. (Michigan Department of Corrections)

2007

U.S. District Court
PREVAILING PARTY DETERMINATION

Agster v. *Maricopa County,* 486 F.Supp.2d 1005 (D.Ariz. 2007). An arrestee's parents and estate brought an action against a county, police officers, county correctional health agency, and nurse, alleging federal civil rights claims. Following a jury verdict in favor of the plaintiffs, the plaintiffs filed two motions for attorney fees and non-taxable costs, and the defendants moved to strike the plaintiffs' second motion for attorney fees. The district court granted the plaintiffs' motions and denied the defendants' motions. The court held that: (1) the reasonable hourly rate for the plaintiffs' lead attorney was $400; (2) reduction of hours requested was warranted for the time plaintiffs' attorneys spent dealing with the media, and for the hours spent on a duplication of effort, turnover of staff, and inefficiencies inherent in utilizing as many timekeepers as the plaintiffs' attorneys used; (3) plaintiffs were entitled to an award of post-trial out-of-pocket expenses, including billed costs not taxed by clerk of court; and (4) apportionment of attorney fees among the defendants was not warranted. (Maricopa County, Arizona)

U.S. Appeals Court
42 U.S.C.A. SEC. 1988
PREVAILING PARTY

Galen v. *County of Los Angeles*, 477 F.3d 652 (9th Cir. 2007). A domestic violence arrestee brought a § 1983 Eighth Amendment action against a county, county sheriff, and individual sheriff's deputies, alleging that bail of $1 million was excessive. The district court granted summary judgment in favor of the defendants and awarded attorney fees in favor of the defendants. The arrestee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that bail was not excessive, and that the deputy who requested a bail enhancement and the deputy's superior who authorized the enhancement request were entitled to qualified immunity. The court held that individual sheriff's deputies were not entitled to the award of attorney fees under § 1988, but that the arrestee's post-discovery litigation of a *Monell* claim was frivolous, supporting the award of attorney fees to the county. (Los Angeles County Sheriff's Department, California)

U.S. District Court
DETERMINATION

King v. *County of Gloucester*, 483 F.Supp.2d 396 (D.N.J. 2007). A law firm moved for reasonable attorney's fees after reaching a settlement in excess of $2 million on a civil rights claim against a county, brought on behalf of the family of an inmate who was beaten to death in a county jail. The district court held that the law firm was entitled to reasonable and appropriate attorney's fees in the amount of one-third of the settlement amount. The court found that the contingent fee of 33-1/3%, requested by the firm, was reasonable under New Jersey law. The court noted that the case was difficult to litigate and was vigorously contested at all stages, the victim had been assailed in the press, the firm spent significant time and effort as a small law office foregoing other potentially profitable engagements, and the firm demonstrated exemplary care and skill, having convinced the county to settle for a sum eight times higher than its initial offer. (Gloucester Co. Jail, N.J.)

U.S. District Court
LIMITATIONS
CONSENT DECREE
POST-JUDGMENT SERVICES

Laube v. *Allen*, 506 F.Supp.2d 969 (M.D.Ala. 2007). A class action lawsuit was brought on behalf of women incarcerated by the Alabama Department of Corrections, who claimed that various state officials were deliberately indifferent to the denial of female prisoners' basic human needs, to the denial of their serious medical needs, and to their substantial risk of serious physical violence. The district court approved two four-year settlement agreements and the prisoners moved for attorneys' fees and expenses. The district court held that: (1) the prisoners were the "prevailing parties" for purposes of imposing attorneys' fees and expenses; (2) the number of hours billed through the date of oral arguments on the motion for a preliminary injunction and the date on which the billing statement read "end of preliminary injunction time" would be cut in half across-the-board; (3) the time spent challenging the prison officials' second remedial plan was non-compensable; (4) fees relating to discovery disputes between the prisoners and the non-state defendants were not compensable from the state defendants; (5) attorney fees that were directly and reasonably incurred in obtaining the court-ordered relief contained within medical-settlement agreement were compensable; (6) interest on attorney's fees and expenses runs from the date of the judgment establishing plaintiffs' entitlement to the award; and (7) the prisoners were entitled to compensable litigation expenses directly and reasonably related to their enforcement expenses. (Alabama Department of Corrections)

U.S. Appeals Court
DETERMINATION

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)

2008

U.S. District Court
CONSENT DECREE
DETERMINATION

Craft v. *County of San Bernardino*, 624 F.Supp.2d 1113 (C.D.Cal. 2008). County jail inmates brought a class action alleging that a county's practice of routinely strip-searching inmates without probable cause or reasonable suspicion that the inmates were in possession of weapons or drugs violated the Fourth Amendment. After the court granted the inmates' motion for partial summary judgment, the parties entered into private mediation and reached a settlement agreement providing for, among other things, a class fund award of $25,648,204. The inmates moved for the award of attorney's fees and costs. The district court held that class counsel were entitled to an attorney's fees award in the amount of 25% of the settlement fund plus costs. The court noted that counsel obtained excellent pecuniary and nonpecuniary results in a complex and risky case involving 150,000 class members, 20,000 claims, and five certified classes, each of which presented unsettled legal issues. According to the court, tens or hundreds of thousands of future inmates benefited from policy changes brought about by the suit, and the attorneys were highly experienced and highly regarded civil rights lawyers with extensive class action experience. (San Bernardino County Jail, California)

U.S. Appeals Court
ATTORNEY FEES
PARTIAL SUCCESS

Davignon v. *Hodgson*, 524 F.3d 91 (1st Cir. 2008). County corrections officers brought a § 1983 First Amendment retaliation action against a sheriff in his individual and official capacities, alleging that disciplinary actions taken by the sheriff had been motivated by the officers' union activities. The officers also asserted state-law civil rights and tort claims. The district court entered judgment on a jury verdict against the sheriff on the § 1983 claims against him in his official capacity, and against the sheriff on some state-law claims. The sheriff appealed. The appeals court affirmed. The court held that the officers' private speech to coworkers concerning a planned picket, whose stated purpose was to allow union members to publicly express criticism of management and to alert the public to the behavior of the sheriff was on a matter of public concern. According to the court, there was no evidence of actual or potential disruption from the officers' brief statements to coworkers concerning a planned picket by the union, and conversely there was ample evidence that the officers had been suspended because of their pro-union activity rather than for reasons of disruption of public safety. The court held that the attorney fee award to the officers' attorneys of approximately $172,000 was not excessive, even though the back-wages damages award was only approximately $18,000. According to the court, the award under a civil rights attorney fee statute did not necessarily have to be proportionate to the amount of damages. The court also held that the officers' lack of success on one of their claims did not preclude the fee award because the officers were successful on the claim that had propelled the litigation. (Bristol County Sheriff's Office, Massachusetts)

U.S. District Court
DETERMINATION
LIMITATION
PARTIAL SUCCESS

Hudson v. *Dennehy*, 568 F.Supp.2d 125 (D.Mass. 2008). Inmates in a state prison, who adhered to the religious teachings of Elijah Muhammad and the Nation of Islam, filed a civil rights action against a commissioner of a state department of corrections, alleging violation of the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA). After entry of partial summary judgment in the inmates' favor, the inmates moved for attorney fees and costs. The district court granted the motion in part. The court held that a fifteen percent reduction of the attorney fee award to account for time spent on an unsuccessful prayer rug claim was reasonable, but a reduction of the attorney fee award was not warranted on the ground that the court granted judgment only with respect to an RLUIPA claim. The court ordered attorney fees to be calculated based on the hourly rate for court-appointed counsel authorized by the Judicial Conference under the Criminal Justice Act (CJA). (Special Management Unit, Massachusetts Correctional Institution- Cedar Junction)

U.S. District Court
DETERMINATION
PREVAILING PARTY

Jama v. *Esmor Correctional Services Inc.*, 549 F.Supp.2d 602 (D.N.J. 2008). An alien brought an action alleging that a government contractor that detained her pending asylum proceedings violated the Religious Freedom Restoration Act (RFRA) and state law. After a jury verdict in the alien's favor, the alien moved for attorney fees and expenses. The district court granted the motion, finding that the alien was the "prevailing party, and that the alien's calculation of the percentage of attorney hours devoted to her RFRA claims was reasonable. The attorney fees and expenses approved by the court totaled $642,399. The decision was vacated and the case was remanded by an appeals court in 2009. The district court noted that "…the case arose out of the appalling conditions that prevailed at the detention center in Elizabeth, New Jersey". The appeals court held that the district court could not attribute a portion of the alien's state law tort award to her RFRA claim but that the court may consider the results on the tort claims. The appeals court affirmed the district court's determination of market billing rates. (Esmor Correctional Services, Inc., Elizabeth, New Jersey)

U.S. District Court
ATTORNEY FEES
LIMITATION

Lewis v. *City of Albany Police Dept.*, 554 F.Supp.2d 297 (N.D.N.Y. 2008). An African-American arrestee brought a civil rights action against a police officer and city, alleging excessive force, an equal protection violation, and municipal liability based on failure to properly train, supervise, or discipline the officer. Following entry of a jury verdict in favor of the arrestee, and denial of the officer's and city's motions for judgment as a matter of law or for a new trial, the arrestee moved for attorney fees and costs. The district court held that the appropriate hourly rate for attorney fees was $210 per hour for an experienced attorney, $150 per hour for an attorney with more than four years experience, $120 per hour for an attorney with less than four years experience, and $80 per hour for paralegals. (City of Albany Police Department, New York)

U.S. District Court
DETERMINATION
POST-JUDGEMENT SERVICES
PREVAILING PARTY

Prison Legal News v. *Schwarzenegger*, 561 F.Supp.2d 1095 (N.D.Cal. 2008). In an action arising from a publisher's allegations that a state corrections department illegally censored its publications, the parties' settlement agreement provided that the publisher was the prevailing party for the purposes of a reasonable attorney fee award and costs. The publisher, Prison Legal News, had alleged that the California Department of Corrections and Rehabilitation (CDCR) illegally censored its publications. The publisher moved for a fee award for work performed by its counsel after the settlement agreement was executed, and for the establishment of a semi-annual fees process. The defendants opposed the motion. The district court granted the motion in part and denied in part. The court held that: (1) the allegedly minimal nature of work performed after the agreement was executed did not preclude the publisher from being the prevailing party entitled to the fee award; (2) the publisher could recover fees for time spent by its counsel on such activities as drafting press releases and responding to media inquiries; (3) clerical tasks could not be billed at the paralegal or attorney rate; (4) a reduction in the fee award was not warranted on grounds that the publisher had multiple attorneys in attendance at two telephone conferences; (5) a fee reduction was not warranted on grounds that the requested fees included hours spent on duplicative and excessive tasks; and (6) the establishment of a semi-annual fees process was not warranted. (California Department of Corrections and Rehabilitation)

2009

U.S. Appeals Court
ATTORNEY FEES ENHANCEMENT LIMITATION
PLRA-Prison Litigation Reform Act

Estate of Enoch ex rel. Enoch v. *Tienor*, 570 F.3d 821 (7th Cir. 2009). The estate and minor sisters of an 18-year-old female prisoner who committed suicide while on suicide watch at a correctional institution brought an action against correctional officers and staff, alleging violations of the prisoner's civil rights and seeking $5 million for the estate plus $5 million for the sisters. After accepting the defendants' offer of a judgment for $635,000, the plaintiffs filed a motion requesting $328,740 in attorney fees. The district court awarded $100,000 to the plaintiffs, with $1,500 to be taxed as fees for the guardian ad litem. The plaintiffs appealed. The appeals court reversed and remanded, holding that the fact that the case was settled for $635,000 did not warrant a reduction in the requested attorney fees. The court noted that $635,000 was not a nominal award, and the Farrar analysis for determining attorney fees, which considered the extent of relief compared to the relief sought, was not relevant in cases in which the recovery was not merely nominal. The court found that the district court did not abuse its discretion in awarding $1,500 in fees to the guardian ad litem. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
DETERMINATION
LIMITATION
PREVAILING PARTY
PLRA-Prison Litigation Reform Act

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 detainees moved for attorney's fees and nontaxable costs. The district court held that: (1) the class of detainees was the prevailing party entitled to attorney's fees; (2) the initial lodestar figure of $1,239,491.63 for attorney's fees was reasonable; (3) Kerr factors provided no basis for downward adjustment of the initial lodestar; (4) the attorney's fees award would not be reduced for limited success; (5) the amount requested as reimbursement for attorney's fees was fully compensable under the Prison Litigation Reform Act (PLRA); (6) PLRA did not require appointment of class counsel for the award of attorney's fees and non-taxable costs; and (7) the class was entitled to interest on the award of attorney' fees from the date of the court's order ruling in favor of the detainees on the motion to terminate. The court noted that defending and enforcing the judgment for more than five years and obtaining prospective relief required substantial time and labor, the issues presented were not novel but many were difficult and complex, conducting discovery, marshaling evidence, and presenting that evidence during a 13-day evidentiary hearing required considerable skill, commitment of attorneys' time and advancement of costs limited attorneys' ability to take on new cases, and the attorneys would not receive any compensation for their work representing the detainees except as awarded by the court. (Maricopa County Sheriff and Maricopa County Board of Supervisors, Arizona)

U.S. District Court
DETERMINATION
PLRA- Prison Litigation Reform Act
PREVAILING PARTY

Hall v. *Terrell*, 648 F.Supp.2d 1229 (D.Colo. 2009). A female detainee brought a § 1983 action against a correctional officer, alleging that he raped her while she was in custody. Following entry of default judgment against the officer, a bench trial to determine damages, and the entry of a judgment awarding compensatory and punitive damages, the detainee moved for prejudgment interest and attorney fees. The district court granted the motion for attorney fees in part. The court held that the Prison Litigation Reform Act (PLRA) applied to the detainee's request for attorney fees where the detainee was, at every stage of the lawsuit, a prisoner confined to a correctional facility, she was the prevailing party in her suit, and the suit was an action in which attorney fees were authorized under § 1988. The court held that the reasonable hourly rate for the lodestar amount, in determining the award of attorney fees under PLRA, was the hourly rate for Criminal Justice Act (CJA) appointments in Tenth Circuit and District of Colorado. According to the court, under PLRA, the appropriate hourly rate for the award of paralegal fees was 64% of the average rate that she had requested for non-senior attorneys, and for an assistant was 50% of such rate. The court held that under PLRA, 10 percent was the appropriate percentage of the judgment obtained by the detainee against the corrections officer, where the factor of the opposing party's culpability or bad faith favored the detainee, the factor of ability to satisfy the award of attorney fees suggested that the detainee should bear some portion of attorney fees, and the factor of the possibility that the award might deter other persons favored the detainee. The district court had awarded $1,354,070 in damages, comprised of $354,070.41 in compensatory damages and $1 million in punitive damages. (Denver Women's Correctional Facility, Colorado)

U.S. Appeals Court
ATTORNEY FEES DETERMINATION LIMITATION

Kahle v. *Leonard*, 563 F.3d 736 (8th Cir. 2009). An individual who was raped by a trainee corrections officer while she was a pretrial detainee, brought a § 1983 action against the trainee corrections officer and other public officials and entities. After a jury found the trainee corrections officer liable and awarded damages, the district court granted the plaintiff's motion for attorneys' fees. The trainee corrections officer appealed. The appeals court affirmed in part and remanded in part. The court held that the district court did not abuse its discretion by admitting the plaintiff's psychologist's report as a supplemental report, and the district court's jury instructions did not constitute an abuse of discretion. The district court applied one percent of the detainee's $1.1 million judgment ($11,000) to attorneys' fees. With the detainee's legal expenses totaling $186,208.88, the defendant was responsible for $175,208.88 in attorneys' fees, in addition to the $1.1 million judgment. The appeals court did not affirm the award of only one percent and remanded the case for further proceedings. (Pennington County Jail, South Dakota)

U.S. Appeals Court
DETERMINATION

King v. *Rivas*, 555 F.3d 14 (1st Cir. 2009). A pretrial detainee brought an action against corrections officers and others, alleging constitutional violations relating to a false accusation of threatening a guard. Prior to trial, the defendants made a package settlement offer, which was rejected by the detainee. Following the trial of one officer, a jury awarded the detainee damages in an amount less than the settlement offer. The parties moved for attorney's fees and costs. The district court granted the detainee's motion and denied the defendant's motion. The officer appealed. The appeals court vacated and remanded. The court held that the package settlement offer is to be taken on its own terms and compared with the total recovery package in determining whether a defendant is entitled to costs following the detainee's success at trial. The court held that the officer was entitled to costs, excluding attorney's fees, and that the detainee was entitled only to attorney's fees and costs accrued prior to the rejected offer. (Hillsborough House of Corrections, New Hampshire).

U.S. District Court
DETERMINATION

L.H. v. *Schwarzenegger*, 645 F.Supp.2d 888 (E.D.Cal. 2009). Juvenile parolees brought a class action against various state officials and agencies seeking to change parole revocation procedures. Following a settlement which included injunctive relief, the plaintiffs moved for attorney fees and costs. The court granted the motion in part. The court held that a five percent reduction of the lodestar amount (number of hours the prevailing party reasonably spent on the litigation multiplied by a reasonable hourly rate) was appropriate, resulting in an attorney fee award of $4,421,173. The court held that the parolees could recover attorney fees related to their unsuccessful motions to amend the complaint, and for time billed for communications among parolees' counsel. According to the court, the hours billed by the parolees' attorneys for motion practice and drafting of complaint were reasonable, but that time billed by the parolees' attorneys related to press about the case was not reasonable. (California)

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

Miranda v. *Utah*, 629 F.Supp.2d 1256 (D.Utah 2009). An inmate brought a § 1983 action against the State of Utah, a warden, and corrections officers alleging the defendants violated his rights under the Eighth Amendment to be free from cruel and unusual punishment. Following a jury verdict against the officer, the inmate moved for attorney fees. The district court held that the appropriate amount of the inmate's judgment to be applied to attorney fees was $2,500. The court noted that under the Prison Litigation Reform Act's (PLRA) attorney fee provision, the court need not automatically apply 25 percent of a prisoner's monetary judgment to pay attorney fees, but rather, the court has the discretion to apply a lower percentage. (Utah Department of Corrections)

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

Parker v. *Conway*, 581 F.3d 198 (3rd Cir. 2009). A prisoner brought a civil rights action against a prison guard. The district court entered judgment in favor of the prisoner, and awarded attorney fees under the Prison Litigation Reform Act (PLRA). The prisoner appealed, and the guard cross-appealed. The appeals court affirmed. The court held that the PLRA's cap on attorney fee awards at 150% of the judgment in a prisoner civil rights suit did not violate equal protection. The court noted that the PLRA's cap on attorney fee awards at 150% of the judgment in a prisoner civil rights suit was rationally related to legitimate government objectives of achieving uniformity in attorney's fee awards, reducing such awards, deterring frivolous lawsuits, and deterring lawsuits that, while not technically frivolous, generate litigation costs that exceed any potential recovery. The court held that the PLRA provision requiring the application of a portion of the judgment in a prisoner civil rights suit, not to exceed 25 percent, to satisfy the amount of attorney fees awarded does not compel district courts to apply 25 percent of the judgment to pay attorney's fees when the attorney's fee award exceeds that amount, as long as it applies some portion of the judgment to satisfy the attorney's fee award. (Pennsylvania Department of Corrections)

U.S. Appeals Court
LIMITATION
PLRA- Prison Litigation Reform Act
PREVAILING PARTY

Perez v. *Westchester County Dept. of Corrections*, 587 F.3d 143 (2nd Cir. 2009). Inmates brought a civil rights action against a county Department of Corrections and officials, alleging refusal to provide Halal meat to Muslim inmates. Following a settlement, the district court granted the inmates' motion for attorneys' fees and the defendants appealed. The appeals court affirmed. The court held that the inmates were the "prevailing parties" for purposes of a fee award, that a statutory fee cap applied to the award, and that the district court properly calculated the fee award. (Westchester County Department of Corrections, New York)

2010

U.S. Appeals Court
DETERMINATION
ENHANCEMENT

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
CONSENT DECREE

Graves v. *Arpaio*, 623 F.3d 1043 (9th Cir, 2010). Pretrial detainees in a county jail system brought a class action against a county sheriff and the county supervisors board, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The district court awarded attorney fees to the detainees. The sheriff appealed the second amended judgment. The appeals court affirmed. The court held that the district court did not abuse its discretion by ordering prospective relief requiring the sheriff to house all detainees taking psychotropic medications in temperatures not exceeding 85 degrees and requiring the sheriff to provide food to pretrial detainees that met or exceeded the United States Department of Agriculture's Dietary Guidelines for Americans. The district court had held that air temperatures above 85 degrees greatly increased the risk of heat-related illnesses for individuals taking psychotropic medications, and thus that the Eighth Amendment prohibited housing such detainees in areas where the temperature exceeded 85 degrees. (Maricopa County Sheriff, Jail, Maricopa County Supervisors, Arizona)

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

Keup v. *Hopkins*, 596 F.3d 899 (8th Cir. 2010). A prisoner brought a § 1983 action against prison officials, alleging that they violated his First Amendment rights by preventing him from mailing drawings. The prisoner had tried to send drawings of a marijuana leaf and a bare-breasted woman to his mother and the Maoist Internationalist Movement (Maoists). The district court entered a directed verdict in the prisoner's favor at the close of a jury trial, and granted the prisoner's motion for attorney fees. The officials appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the correctional services department's decision to amend an operational memorandum to ban only drawings that advocated or were likely to incite violent or illegal activity did not render moot the prisoner's claim for monetary damages for any violations of his constitutional rights that had occurred prior to such an amendment. According to the court, the prisoner was the "prevailing party," entitled to attorney fees. The court found that the prisoner's award of $1.00 in nominal damages was subject to the 150% cap sent by the Prison Litigation Reform Act (PLRA) and he thus was entitled to only $1.50 in fees, rather than the $25,000 awarded by the district court. (Lincoln Correctional Center, Nebraska).

U.S. Appeals Court
DETERMINATION
LIMITATION

McDaniel v. *County of Schenectady*, 595 F.3d 411 (2nd Cir. 2010). Pretrial detainees appealed an order of the district court which approved the settlement of a class action arising from jail defendants' alleged violations of their constitutional rights during strip-searches, but awarding less than the requested fee to their attorneys. The appeals court affirmed, finding that the district court did not abuse its discretion by declining to award attorney fees using a percentage-of-fund approach, in the extent of its reliance on the modified lodestar approach, or in its application of the reasonableness factors. The court noted: "The parties vigorously litigated this action for a period of more than three years, with various attorneys for the plaintiff class spending more than 1,000 hours working on the case." The parties eventually agreed to injunctive relief which included the creation of a settlement fund totaling $2.5 million. The detainees' suggested a fee award of 26% represented a multiplier of 1.98-2.24 beyond what counsel would have earned based on their hourly rates, and the court's award was the equivalent to 13% of the common fund, which the court found was squarely within the range of typical awards in similar cases. (Schenectady County Jail, New York)

U.S. Appeals Court
DETERMINATION
PREVAILING PARTY

Prison Legal News v. *Schwarzenegger*, 608 F.3d 446 (9th Cir. 2010). A nonprofit charitable organization that published a monthly magazine containing news and analysis relating to the legal rights of prisoners brought an action against state officials, in their individual and official capacities, seeking monetary, injunctive, and declaratory relief under § 1983 for violations of the First and Fourteenth Amendments. The organization challenged state institutions' refusal to deliver the organization's magazine to certain prisoners. After a settlement agreement was reached, the district court granted the organization's first motion for attorneys' fees and costs, and granted in part the organization's second motion for attorneys' fees and costs. State officials appealed. The appeals court affirmed in part, vacated in part, and remanded with instructions. The court held that the civil rights attorneys' fee statute authorized the organization, that prevailed in its § 1983 action against state officials by obtaining a legally enforceable settlement agreement relating to the delivery of its magazine to prisoners, to recover attorneys' fees for monitoring the state officials' compliance with the parties' settlement agreement. The appeals court held that the district court did not abuse its discretion by awarding fees for 31.5 hours of "correspondence with inmates" where without such correspondence it would have been difficult for the organization to discover or to document violations of the terms of the settlement. (California Department of Corrections and Rehabilitation)

U.S. District Court
DETERMINATION
PLRA- Prison Litigation Reform Act
PREVAILING PARTY

Shepherd v. *Wenderlich*, 746 F.Supp.2d 430 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against prison officials and related defendants for alleged violations of his First Amendment right to free exercise of religion, as well as his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment upon a jury verdict for the prisoner against two of the defendants, awarding $1 in actual damages. The prisoner moved for post-trial relief. The district court held that the prisoner was the "prevailing party" in the action and that he had satisfied statutory requirements, under the Prison Litigation Reform Act (PLRA), for the award of attorney fees as the "prevailing party." The court held that a cap on the award of attorney fees of 150% under PLRA was applicable to the prisoner's action. The prisoner originally sought attorneys' fees totaling $99,485.25, which were later reduced to $46,575. The district court awarded attorneys'

fees against the two defendants in the amount of $1.40 and awarded costs against the two defendants in the total amount of $2,124. (Elmira Correctional Facility, New York)

U.S. Appeals Court
42 U.S.C.A. § 1988

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)

2011

U.S. District Court
DETERMINATION

Drumgold v. *Callahan*, 806 F.Supp.2d 428 (D.Mass. 2011.) A plaintiff brought a § 1983 action against a state prosecutor, alleging withholding of evidence resulted in his wrongful conviction and incarceration for 14 years. After a jury verdict in his favor, the plaintiff moved for attorney fees and costs. The district court held that counsel was entitled to $1,613,847 in reasonable attorneys' fees and $51,632 in costs. The court noted that the proposed rates for the plaintiff's attorneys were reasonable based on their experience, the requested number of hours was adjusted downward to reflect unsuccessful claims, and there was nothing to indicate that the time records submitted were not contemporaneous. (City of Boston, Massachusetts)

U.S. District Court
LIMITATION

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. Appeals Court
DETERMINATION
PARALEGALS
PLRA- Prison Litigation Reform Act

Perez v. *Cate*, 632 F.3d 553 (9th Cir. 2011). A state inmate filed a class action under § 1983 alleging that prison officials violated the Eighth Amendment in their provision of dental care to him. After the parties settled the action the district court awarded attorney and paralegal fees, and the officials appealed. The appeals court affirmed, finding that paralegal fees were subject to the same hourly cap as attorney fees, under the Prison Litigation Reform Act (PLRA), even though that hourly rate exceeded a guideline established by the district court for paralegals working for court-appointed counsel. The court noted that the award was below the paralegal market rate in the area. (California Department of Corrections and Rehabilitation)

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

Shepherd v. *Goord*, 662 F.3d 603 (2nd Cir. 2011). A state prisoner brought a § 1983 action against prison officials and related defendants for alleged violations of his First Amendment right to free exercise of religion, as well as his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment upon a jury verdict for the prisoner against two of defendants. The prisoner moved for post-trial relief. The district court awarded attorney fees in the amount of $1.50. The prisoner appealed. The appeals court affirmed. The court held that the Prison Litigation Reform Act's (PLRA) attorney fee cap of 150% of the "monetary judgment" applied to limit the attorney fee award to $1.50, where the jury had awarded the prisoner monetary relief of only $1.00 in actual damages. (Elmira Corr'l. Facility, Hew York)

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

Balla v. *Idaho*, 677 F.3d 910 (9th Cir. 2012). Following completion of litigation against the State of Idaho and the state Department of Corrections, on state inmates' motion for clarification and motion for contempt for failure to comply with an injunction in state inmates' class action challenging conditions of confinement in an Idaho jail, the inmates' attorneys sought fees and costs. The district court awarded costs and fees, and denied the State's motion to stay pending appeal. The state appealed. The appeals court affirmed, finding that the award of attorney fees was warranted. The court found that the award of fees to the law firm appointed to represent the class of state inmates was warranted under the Prison Litigation Reform Act (PLRA), although the inmates' motion for an order to show cause why the State of Idaho and the Department of Corrections should not be held in contempt for violating the injunction was denied because the defendants had brought themselves into conformity with the injunction between the time the motion was filed and the time it was heard, and because the State did not intentionally violate the injunction. The court noted that the object of the motion was to obtain compliance, and counsel's monitoring efforts, including the denied motion, played a key role in resolving the overcrowding issue at the prison. The court awarded a slightly reduced amount: $76,185.60 in attorney's fees, $1,249.20 in costs and $46.94 in postage and office supply costs for the class representative. (Idaho State Correctional Institution)

U.S. District Court
DETERMINATION
LIMITATION
PLRA- Prison Litigation Reform Act

Ford v. *Bender*, 903 F.Supp.2d 90 (D.Mass. 2012). A law firm, which had been appointed to represent a pretrial detainee in a § 1983 action challenging the constitutionality of a state correctional facility's restrictive detention of the detainee in a disciplinary unit without a hearing, filed a motion for attorney fees and a bill of costs, after the detainee was awarded $47,500 in damages and injunctive relief at a jury-waived trial. The district court allowed the motion in part. The court held that: (1) the Prison Litigation Reform Act's (PLRA) cap on defendants' liability for attorney fees was not applicable; (2) one dollar of the monetary judgment would be applied to attorney fee award; (3) the maximum hourly rate available under PLRA to court-appointed counsel was 150 percent of the hourly rate authorized by the Judicial Conference; (4) a 45 percent reduction of the law firm's proposed hours, to account for duplication of work, was appropriate; and (5) an attorney fee award of $258,000 was appropriate. The law firm had sought $345,542 in fees, and costs in the amount of $20,456. (Department Disciplinary Unit, MCI–Cedar Junction, Massachusetts)

U.S. Appeals Court
ATTORNEY FEES
PREVAILING PARTY

Hilton v. *Wright*, 673 F.3d 120 (2nd Cir. 2012). A state prison inmate infected with the Hepatitis C virus brought a class action against the New York State Department of Correctional Services and the Department's Chief Medical Officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving the injunctive and equitable claims. Defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. The appeals court vacated the district court's decision granting summary judgment to the Chief Medical Officer on the Eighth Amendment claim, due to the extreme brevity of the district court's opinion. The appeals court also vacated the district court's decision granting summary judgment on the ADA claim on the ground that the Eleventh Amendment precluded damages. (New York Department of Correctional Services)

U.S. Appeals Court
ATTORNEY FEES

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. 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
DETERMINATION
LIMITATION
PLRA- Prison Litigation Reform Act

Pierce v. *County of Orange*, 905 F.Supp.2d 1017 (C.D.Cal. 2012). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff, seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims, and the detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, following a bench trial, the district court entered a final judgment and a permanent injunction, and the detainees renewed their motion for attorney fees. The district court granted

the motion. The court held that: (1) attorneys were entitled to compensation for time spent taking calls from inmates and performing pre-trial preparation; (2) time spent unsuccessfully opposing a motion for sanctions was not compensable as part of fee award; (3) a 50%/50% split between pre-appeal constitutional claims and Americans with Disabilities Act (ADA) claims was appropriate; (4) reduction in the fee award in the amount of 30% was warranted based on the detainees' limited success on their constitutional claims; and (5) application of a multiplier to the lodestar calculations, under the provisions of the Prison Litigation Reform Act (PLRA) was not warranted. The case began in 2001, a class of pre-trial detainees in the Orange County, California, jails, filed a lawsuit against the County under 42 U.S.C. § 1983 for violations of their Fourteenth Amendment due process rights for the County's operation of the County jails in an unconstitutional manner. Allegations included depriving detainees of opportunities for exercise and restricting their ability to practice religion. (Orange County, California)

2013

U.S. District Court
DETERMINATION
PREVAILING PARTY

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
ATTORNEY FEES
ENHANCEMENT

Hilton v. *Wright*, 928 F.Supp.2d 530 (N.D.N.Y. 2013). A state prison inmate infected with the Hepatitis C virus (HCV) brought a class action against the New York State Department of Correctional Services and Community Supervision (DOCCS) and its chief medical officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving injunctive and equitable claims. The defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. On remand, the district court held that: (1) the Eleventh Amendment barred an Eighth Amendment claim against an officer in his official capacity; (2) the inmate waived the Eighth Amendment claim based on initial denial of treatment due to his short prison term; (3) a fact issue precluded summary judgment on the Eighth Amendment claim based on denial of treatment due to the inmate's failure to complete a substance abuse program;(4) a fact issue precluded summary judgment on the ADA and Rehabilitation Act claims; and (5) enlargement of the cap set forth in the agreement was appropriate. (New York State Department of Correctional Services and Community Supervision)

U.S. Appeals Court
ATTORNEY FEES
PREVAILING PARTY

Jones v. *McDaniel*, 717 F.3d 1062 (9th Cir. 2013). A state prisoner filed a civil rights action against prison officials, alleging violations of his First and Fourteenth Amendment rights. The district court granted summary judgment in part for the prisoner. The parties entered into a settlement agreement after a jury verdict in the prisoner's favor. The prisoner appealed. The appeals court dismissed the appeal, holding that the prisoner could not appeal the district court's grant of partial summary judgment after entry of a judgment in favor of the prisoner on his due process claim. The officials had agreed, among other things, to withdraw all post-trial motions, to pay the prisoner $11,000 in punitive damages plus costs and attorney's fees, and to expunge all records of an improper disciplinary charge. (Ely State Prison, Nevada)

U.S. District Court
DETERMINATION
LIMITATION
PREVAILING PARTY

Wells v. *City of Chicago*, 925 F.Supp.2d 1036 (N.D.Ill. 2013). A representative of an arrestee's estate filed a § 1983 action against a city and its police officers and employees for claims arising from his arrest, confinement, and death. After the entry of a jury verdict in the plaintiff's favor, the plaintiff moved for the award of attorney fees and expenses. The district court granted the motion in part and denied in part. The court held that: (1) reduction of the attorney fee award was not warranted due to the fact that the plaintiff prevailed against only four of six individual defendants whom she sued; (2) a three-fourths reduction of the plaintiff's attorney fee award was warranted due to the plaintiff's failure to prevail on her medical care claim; (3) reduction was not warranted due to the fact that the pain and suffering award was less than requested; (4) a reduction was warranted based on the plaintiff's limited success on punitive damages; (5) a two-thirds reduction of the plaintiff's expense award was warranted; (6) housing expenses incurred during the trial by out-of-town counsel were recoverable; and (7) neither party was entitled to recover its costs. The jury had been asked to award punitive damages totaling $1,750,000 against eleven defendants, but the jury awarded a total of $150,500 against four officers, and the court later vacated the award completely. The jury awarded the plaintiff $1 million in compensatory damages against all of the defendants found to have been liable. (City of Chicago, Illinois)

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

Wilkins v. *Gaddy*, 734 F.3d 344 (4th Cir. 2013). A state prisoner brought a § 1983 action alleging an officer maliciously and sadistically assaulted him with excessive force in violation of the Eighth Amendment. The prisoner alleged that the officer “lifted and then slammed him to the concrete floor where, once pinned, punched, kicked, kneed, and choked” him until the officer was removed by another member of the corrections staff. After a jury returned a verdict for the prisoner, the district court granted the prisoner's motion for attorneys' fees, but only in the amount of $1.The prisoner appealed. The appeals court affirmed. The court held

that the provision of the Prison Litigation Reform Act (PLRA), capping attorneys' fee award at 150% of the value of the prisoner's monetary judgment, satisfied a rational basis review. The court held that the PLRA provision did not violate the Fifth Amendment's equal protection component by treating the prisoner and non-prisoner litigants differently, where the provision rationally forestalled collateral fee litigation while ensuring that the incentive provided by an attorneys' fee award still attached to the most injurious civil rights violations. (Lanesboro Correctional Institute, North Carolina Department of Public Safety)

U.S. Appeals Court
ATTORNEY FEES LIMITATION
PLRA-Prison Litigation Reform Act

Woods v. *Carey*, 722 F.3d 1177 (9th Cir. 2013). After a state prisoner prevailed in his civil rights action against prison officials for deliberate indifference to his medical needs due to improper denial of two grievance forms seeking dental care, and obtained an award of $1500 in compensatory damages and $1000 in punitive damages, he moved for an award of attorney fees incurred in defending the favorable judgment on appeal. The district court awarded the fees. One defendant appealed, arguing that the fees award was limited by the Prison Litigation Reform Act (PLRA). The district court held that, in a matter of apparent first impression, the Prison Litigation Reform Act (PLRA) attorney fees cap did not apply to fees incurred by the prisoner in successfully defending the judgment on appeal. (California State Prison, Solano)

2014

U.S. Appeals Court
PREVAILING PARTY

Ford v. *Bender*, 768 F.3d 15 (1st Cir. 2014). A pretrial detainee commenced an action alleging that prison officials violated his due process rights by holding him in disciplinary segregated confinement throughout the period of pretrial detention and into the subsequent criminal sentence as punishment for conduct that had occurred while he was imprisoned during a prior criminal sentence. The district court held that the detainee's punitive disciplinary confinement violated due process, and largely denied the officials' claims of qualified immunity. The court awarded the detainee partial money damages and equitable relief after a three-day bench trial, and awarded attorneys' fees and costs on the detainee's motion. The court held that the detainee was the "prevailing party" for the purpose of attorneys' fees and costs with regard to an injunction to ensure his access to traditional programs that were available to the general population; and (5) the detainee was not the "prevailing party" for the purpose of attorneys' fees and costs with regard to an injunction to deem his administrative sanction satisfied. The court noted that conditions in the disciplinary unit are considerably more onerous than conditions of confinement for the general population--an inmate is kept for twenty-three hours a day in a cell measuring seven by twelve feet, each cell has a solid steel door with a small inset window, a narrow window to the outdoors, a cement bed, desk, and stool, and a toilet visible through the inset window. An inmate typically leaves his cell for only one hour a day to exercise (five days a week) and to shower (three days a week). He is subject to strip searches whenever he enters or leaves his cell. When an inmate is out of his cell for any reason, he is manacled and placed in leg chains. Inmates are socially isolated. Each inmate receives his meals through a slot in the steel door and is given only twenty minutes to eat. The prison library is off-limits, although an inmate may receive law books from a "book cart," which requires a formal request and typically results in a wait of eight days. Communication with other inmates, guards, and the outside world is severely restricted. (Massachusetts Correctional Institution at Cedar Junction)

U.S. District Court
PREVAILING PARTY

Graves v. *Arpaio*, 48 F.Supp.3d 1318 (D.Ariz. 2014). Pretrial detainees in the Maricopa County, Arizona, jail system brought a class action against the county and the county board of supervisors, seeking injunctive relief for alleged violations of their civil rights. The parties entered into consent decree which was superseded by amended judgments entered by stipulation of the parties. The defendants sought to terminate the remaining court-ordered injunctive relief regarding medical, dental, and mental health care for detainees. The district court denied the motion. The court held that: (1) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from serious health conditions was not warranted; (2) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from mental illness was not warranted; (3) termination of injunctive relief requiring the timely identification, segregation, and treatment of detainees with communicable diseases was not warranted; (4) termination of injunctive relief requiring that the detainees have ready access to care to meet their serious medical and mental health needs was not warranted; and (5) the detainees were the prevailing party for the purpose of awarding attorney's fees. (Maricopa County Jail, Arizona)

U.S. District Court
PREVAILING PARTY
CONSENT DECREE
POST-JUDGMENT SERVICES

Kelly v. *Wengler*, 7 F.Supp.3d 1069 (D.Idaho 2014). State inmates filed a class action against a warden and the contractor that operated a state correctional center, alleging that the level of violence at the center violated their constitutional rights. After the parties entered into a settlement agreement the court found the operator to be in contempt and ordered relief. The inmates moved for attorney fees and costs. The district court granted the motions. The court held that the settlement offer made in the contempt proceeding, by the contractor that operated the state correctional facility, which provided an extension of the settlement agreement, required a specific independent monitor to review staffing for the remainder of the settlement agreement term, and offered to pay reasonable attorney fees, did not give the inmates the same relief that they achieved in the contempt proceeding, and thus the inmates' rejection of the offer did not preclude them from recovering attorney fees and costs they incurred in the contempt proceeding. The court noted that the inmates were already entitled to reasonable attorney fees in the event of a breach, and the inmates achieved greater relief in the contempt proceeding with regard to the extension and the addition of an independent monitor. After considering the totality of the record and the arguments by counsel, the court awarded the plaintiffs' counsel $349,018.52 in fees and costs. (Idaho Correctional Center, Corrections Corporation of America)

U.S. District Court
PREVAILING PARTY
ENHANCEMENT
PARTIAL SUCCESS

Rodriguez v. *County of Los Angeles*, 96 F.Supp.3d 1012 (C.D. Cal. 2014). State detainees brought an action against numerous defendants, including a county, a sheriff's department, and individual jail guards and supervisors, alleging excessive force under § 1983. Following a jury verdict in their favor, the detainees moved for attorney fees. The district court granted the motion, holding that: (1) the detainees were entitled to recover fully compensatory attorney fees, notwithstanding the fact that some individual defendants were dismissed or prevailed at trial and that the detainees did not succeed on all motions, where the detainees succeeded on all of their claims; (2) the detainees were entitled to a lodestar multiplier of 2.0; and, (3) the district court would apply only a 1% contribution of the detainees' $950,000 damages award to their attorney fee award, where the defendants' conduct involved malicious violence leaving some detainees permanently injured. The court awarded over $5.3 million for attorney fees. (Men's Central Jail, Los Angeles, California)

2015

U.S. Appeals Court
PREVAILING PARTY

Cortez v. *Skol*, 776 F.3d 1046 (9th Cir. 2015). The mother of a state inmate who suffered severe brain damage, after he was attacked by two fellow prisoners while being escorted through an isolated prison passage by a corrections officer, brought an action alleging a § 1983 Eighth Amendment claim against the officer and a gross negligence claim against the state. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court reversed, finding that summary judgment was precluded by issues of material fact as to whether the corrections officer exposed the high-security inmate to a substantial risk of serious injury when he: (1) escorted the inmate and two fellow high-security prisoners through the isolated prison passage by himself; (2) did not require the prisoners to wear leg restraints; and (3) failed to physically intervene once the prisoners attacked the inmate. The court also found fact issues as to whether the officer was subjectively aware of the risk involved in the escort and acted with deliberate indifference to the inmate's safety. The court held that the mother was not the prevailing party for purposes of awarding attorney's fees. (Morey Unit, Lewis Prison Complex, Arizona)

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

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
PREVAILING PARTY

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. The court found that the defendants violated FOIA by failing to make a timely determination on the requester's requests for information. The court found the delays "egregious" where the requester did not receive ICE's first production of documents, or any other determination, until 361 days after mailing its first FOIA request letter, seven months after mailing its second request letter, and almost four months after filing this lawsuit, and production of the remainder of the requested documents was not completed for several additional months. The court awarded reasonable attorney fees and costs to the requester, finding that it was the prevailing party. (U.S. Department of Homeland Security, Immigration and Customs Enforcement)

U.S. District Court
PREVAILING PARTY

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)

SECTION 6: BAIL

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.

1973

U.S. Supreme Court
BAIL
VOTING

Goosby v. Osser, 409 U.S. 512 (1973). Class action brought by Philadelphia County prisoners unable to make bail or being held on nonbailable offenses, challenging provisions of the Pennsylvania Election Code, specifically alleging that prohibiting person confined in penal institutions from voting by absentee ballot, failing to provide facilities for that purpose at the prison, and refusing to permit members of the class to leave the prison to register and vote constituted a violation of the equal protection and due process clauses of the fourteenth amendment. Named as defendants were numerous state and municipal officials. A judge for the Eastern District of Pennsylvania dismissed the claim, and ruled the case nonjusticiable as not involving an art. III case or controversy when the commonwealth officials (viewed by the court as the principal defendants) conceded the provision's unconstitutionality. The Third Circuit Court of Appeals differed as to justiciability but affirmed on the ground the claims were wholly unsubstantial in light of McDonald v. Board of Election Comm'rs., 394 U.S.802, ruling that a three judge district court was not required under U.S.C. Section 2281.

HELD: The fact that the commonwealth officials named as defendants conceded the unconstitutionality of the election code provisions did not foreclose the existence of an art. III case or controversy as the municipal officials named as defendants continued to assert the right to enforce the provisions.

HELD: McDonald does not foreclose the subject of the challenge to the election code provisions, as that decision did not deal with a situation of an absolute prohibition against voting by prisoners. The lower court decision was reversed and remanded. (Philadelphia County Prisons, Pennsylvania)

1976

U.S. Supreme Court
BAIL
COURT APPEARANCE

Estelle v. Williams, 425 U.S. 501 (1976), cert. denied, 426 U.S. 954 (1974). Williams, unable to post bond, was held while awaiting trial on a charge of assault. When Williams learned he was to go on trial, he requested his civilian clothes. The request was denied, but no objection was made at trial. Williams was convicted of assault with intent to commit murder with malice, a decision upheld by the Texas Court of Appeals.

Williams then petitioned the U.S. District Court for a writ of habeas corpus on the ground that requiring him to stand trial in prison garb was unfair. While the district court agreed such practice was unfair, it denied relief on the ground that the error was harmless. The Fifth Circuit Court of Appeals reversed solely on the issue of harmless error. Defendant Estelle, Texas Corrections Director, sought certiorari from the U.S. Supreme Court. The decision was reversed.

HELD: "[A]lthough the state cannot, consistently with the fourteenth amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes, the failure to make an objection to the court as to being tried in such clothes, for whatever reasons, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." 425 U.S. at 512. (Harris County Jail, Texas)

1981

U.S. Appeals Court
BAIL

Cobb v. Atych, 643 F.2d 946 (3rd Cir. 1981), cert. denied, 429 U.S. 1103 (1976). 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 eight 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)

1982

U.S. District Court
BAIL
SEARCHES

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)

1984

U.S. Appeals Court
BAIL
SEARCHES

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)

1985

U.S. District Court
BAIL
PAROLE VIOLATORS

Faheem-el v. Klincar, 38 CrL 3178 (N.D. Ill., 1985). Blanket policy of denying bail for accused parole violators found unconstitutional. The U.S. District Court, Northern District, Illinois, held that state practices concerning parolees violated eighth amendment and fourteenth amendment constitutional guarantees, ordering the practice of automatically denying bail to stop. The court found the practice arbitrary in that it treated all parolees the same, without regard to their offenses or potential for danger. Although the eighth amendment permits a state to deny bail in individual cases, it does not provide nor support a statutory scheme that removes bail as an option for an entire class of defendants. Since state policies make a distinction between probationers and parolees, the policies fail the Equal Protection Clause's rational basis test. (Department of Corrections, Illinois)

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Alatishe, 37 CrL 1070 (D.C. Cir. 1985). Motion for pretrial detention may follow a temporary detention in spite of provision of Bail Reform Act. In this complicated case, the U.S. Court of Appeals for the District of Columbia added another interpretation to the provisions of the Bail Reform Act of 1984 (USC 3141-56). After learning that the defendant who had been arrested on a serious drug charge was already on probation, the government requested the magistrate to detain the defendant for ten days under the provisions of the act at the time of presentment. The request was granted, allowing time for the court supervising his probation to revoke it.
Toward the end of the temporary detention period the magistrate allowed the government to move for pretrial detention, over the objections of the defendant. The appeals court found that while Section 3142(f), read literally, precludes a pretrial detention hearing if one is not held "immediately upon the person's first appearance,"

the court found that the provision for temporary detention and the legislative history dictate a different interpretation, ruling that under the confusing circumstances of this case, the detention hearing was timely. (District of Columbia)

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Al-Azzawy, 768 F.2d 1141 (9th Cir. 1985). Ninth circuit requires strict adherence to time requirements of Bail Reform Act. Aligning itself with the Second and Fifth Circuits, the U.S. Court of Appeals for the Ninth Circuit has held that if the procedures under Section 3142(f) of the Bail Reform Act of 1984 are violated in any material way, unconditional pretrial detention may not be ordered. In this case, the hearing for indefinite pretrial detention did not occur, as required in the act, "immediately upon the defendant's first appearance before a judicial officer." This hearing followed the defendant's first appearance by nearly a month, during which time he was detained.

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Contreras, 776 F.2d 51 (2nd Cir. 1985). Indictment by grand jury establishes probable cause for purposes of Bail Reform Act. The U.S. Court of Appeals for the Second Circuit has ruled that if an indictment alleging the offense has been returned, a district court facing bail decisions should rely on the indictment rather than making an independent assessment of probable cause in the context of the Bail Reform Act of 1984. (Eastern District, New York)

U.S. District Court
BAIL

U.S. v. LoFranco, 620 F.Supp. 1324 (N.D. N.Y. 1985). Defendant ordered released from detention as federal court finds violation of due process clause. The continued detention of a defendant since May 1985, whose "complex case" will not come to trial until February, 1986, did not consider the defendant's due process rights and therefore was ordered discontinued by a federal district court. "In the absence of statutory limitations on pretrial detention in a complex case like this, there is no indication that the legislative and executive branches have considered the defendant's due process rights and therefore no basis for confidence that the detention is constitutional," observed the court. In weighing the defendant's liberty interest against society's interest in his continued detention, the court concluded that the defendant must be released, even though he "will create potential dangers to the public and to the integrity of his trial." (Northern District, New York)

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Maull, 768 F.2d 211 (8th Cir. 1985). Eighth circuit creates split in circuits over interpretation of "first appearance" requirement of Bail Reform Act. Disagreeing with other circuits, the U.S. Court of Appeal for the Eighth Circuit has held that the requirement of subsection (f) of Section 3142 of the Bail Reform Act of 1984 (detention hearing shall be held immediately upon the person's first appearance before the judicial officer) should not be interpreted literally. Rather, the majority says that reading the sentence in isolation is an error. When read in context and in the spirit of the act, the majority submits that the sentence indicates that the hearing is to be held promptly when one is ordered. (Eastern District, Massachusetts)

1986

U.S. Appeals Court
BAIL
COURT APPEARANCE
FEMALE DETAINEES

Anela v. City of Wildwood, 790 F.2d 1063 (3rd Cir. 1986). Female detainees confined overnight were denied fourteenth amendment rights; city could be held liable for conditions. Nine females and one male, ages seventeen to twenty, were arrested at 11:15 p.m. by city police for loud radio playing. The male arrestee was able to post bail and was released. The females were held until 11:00 the following morning. The females filed suit, alleging that their confinement in cells without drinking water, food or mattresses violated their constitutional rights. The Federal District Court dismissed several counts prior to trial and directed a verdict against the plaintiffs following a trial. The U.S. Court of Appeals for the Third Circuit held that: (1) the district court properly denied the plaintiffs' motion to reopen the case and did not err in its directed verdict for the individual defendants on the plaintiffs' denial of equal protection claim; (2) the district court erred in dismissing the plaintiffs' fourth amendment claims on the ground of collateral estoppel; (3) the city is responsible for the use of a bail schedule in violation of a rule of the New Jersey Supreme Court; (4) the conditions of confinement to which the non-disruptive, non-violent, non-alcoholic women were subjected constituted privation and punishment in violation of the fourteenth amendment; and (5) the city may be held liable under Monell for the conditions of confinement, even if the practices with respect to jail conditions were followed without formal city action, because it appears that they were the norm and had become acceptable standard and practice for the City. (City of Wildwood, New Jersey)

U.S. Appeals Court
COURT APPEARANCE

Talbert v. Kelly, 799 F.2d 62 (3rd Cir. 1986). Rule 3:4-1 of the Rules Governing Criminal Practice promulgated by the New Jersey Supreme Court allows supervising police officers present at a stationhouse to issue a summons to those arrested for misdemeanors and then release them or admit them to bail. However, the City of

Newark's policy was to hold the accused until he appeared before a magistrate, rather than to allow bail at the stationhouse.

The trial judge called the city's procedure "absurd" and "ponderous" in that transportation arrangements had to be made for court appearances, among other "complexities." He held the city liable for "deviation from the procedure set forth in the court rules."

The federal appellate court upheld the city's procedure in light of the availability of magistrates on a twenty-four hour basis. Jail personnel were instructed to call them at home on weekends or after court hours to obtain a "telephone" hearing within twenty-four hours of an arrest. The fact that this procedure was not followed by an employee was not grounds to hold the city liable for what ended up to be a four-day detention after a magistrate left court early on a Friday. The statute of limitations had run before interrogatories were served seeking the names of individuals at the station house. (City of Newark, New Jersey)

U.S. Appeals Court
BAIL REFORM ACT

United States v. Becerra-Cobo, 790 F.2d 427 (5th Cir. 1986). Under the Bail Reform Act, the detention pending trial of an alien who has not been admitted for permanent residence in the United States need not be demanded at the first temporary detention appearance so long as it is demanded at the first appearance of the alien for any other purpose and such hearing is held within the ten-day period of the initial temporary detention. (Bail Reform Act, Texas)

U.S. District Court
BAIL

United States v. Deitz, 629 F.Supp. 655 (N.D.N.Y. 1986). The standard for obtaining a stay by the court of appeals of a district court order releasing defendants on bail is the same as the standard for obtaining a preliminary injunction. It was unclear whether the court of appeals applied that standard in staying a district court order because the court did not write an opinion explaining the reason for its stay. Thus, defendants may have been unconstitutionally detained between the time the order was stayed and the time they pleaded guilty. However, even if the defendants were unconstitutionally detained, the district court could not grant the request to compensate them by releasing them before sentencing. The district court had to apply 18 U.S.C.A.
Section 3143 providing that a person who is found guilty and awaiting sentence must be detained unless he shows by clear and convincing evidence that he is not likely to flee or pose danger to the community if released. (New York)

U.S. Appeals Court
BAIL

United States v. Domingues, 783 F.2d 702 (7th Cir. 1986). The district court's finding of dangerousness, based on application of the presumption that the defendant's involvement in a narcotics distribution organization presented a danger to the community, was preliminarily rebutted by evidence of economic and social stability, coupled with the absence of any relevant criminal record. Accordingly, conclusive application of the presumption to detain the defendants without bail pending trial was improper. (Indiana)

U.S. Appeals Court
BAIL REFORM ACT

United States v. Himler, 797 F.2d 156 (3rd Cir. 1986). The Bail Reform Act does not authorize the detention of a defendant based on danger to the community from the likelihood that he will, if released, commit another offense involving false identification. Any danger which he may present to the community may be considered only in setting conditions of release. He may be detained only if the record supports a finding that he presents a serious risk of flight.

The magistrate properly ordered the temporary detention of the defendant upon being informed that there was an outstanding Florida warrant for the defendant's arrest as well as a detainer lodged against him by the Pennsylvania Department of Probation and Parole, in order to give other officials time to take the defendant into custody, where the defendant appeared on charges involving production of a false identification document, being an international driving permit.

The judicial officer must impose least restrictive bail conditions necessary to assure appearance and safety if judicial officer finds that release on personal recognizance or unsecured appearance bond will not provide requisite assurances. (Pennsylvania)

U.S. Appeals Court
REVOCATION

United States v. Ruggiero, 796 F.2d 35 (2nd Cir. 1986). The defendant appealed from an order of the district court revoking bail. The court of appeals held that the defendant's courtroom threats to a witness and to the prosecutor in the presence of the district judge, and evidence that the defendant had participated at a high level in an organized crime family while on bail, were legally sufficient to support the revocation of bail. (New York)

U.S. Appeals Court
CONDITIONS

United States v. Spilotro, 786 F.2d 808 (8th Cir. 1986). Imposing as a condition of pretrial release for a defendant in a prosecution for racketeering that he not associate with any person who has been convicted of a felony except when necessary for business purposes or the preparation of his defense was an abuse of discretion. The condition was imposed as a general matter without any statement of reasons why the condition was necessary to assure the defendant's appearance. (Missouri)

U.S. Appeals Court
BAIL REFORM ACT

United States v. Wheeler, 795 F.2d 839 (9th Cir. 1986). The defendant moved for bail pending appeal. The district court denied motion, and the defendant appealed. The court of appeals held that the district court's failure to make written findings or to provide a transcript of oral reasons for its denial of bail required remand for proper written findings. The defendant bears the burden of showing, for purposes of a motion for bail pending appeal from conviction, that he is neither flight risk nor danger to any other person or community. (Bail Reform Act, California)

U.S. Appeals Court
BAIL

U.S. v. Melendez-Carrion, 790 F.2d 984 (2nd Cir. 1986). cert. denied 107 S.Ct. 562. A federal appeals court ruled that defendants' due process rights were not violated by their detention for more than 19 months prior to trial due to the risk of flight. There was evidence that the defendants were leaders of a paramilitary terrorist group dedicated to achieving independence for Puerto Rico and that they participated in a conspiracy involving the $7.6 million Wells Fargo robbery, and the robbery itself. Both defendants had very limited ties to the community and had a record of prior flight. (Connecticut)

1987

U.S. Appeals Court
BAIL REFORM ACT
PROBATION
REVOCATION

U.S. v. Bell, 820 F.2d 980 (9th Cir. 1987). The standards for release set forth in 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. District Court
BAIL REFORM ACT

U.S. v. Gonzalez, 675 F.Supp. 208 (D. N.J. 1987). Defendants, charged with narcotics offenses, were subject to a rebuttable presumption that no condition or combination of conditions would reasonably assure their appearance and the safety of other persons in the community. One defendant overcame the presumption and was conditionally released from pretrial detention pursuant to the Bail Reform Act; he offered $800,000 in security, lived in a local community where he owned a house and a business, and had previously been free on bail for a period of 18 months prior to another conviction. (New Jersey)

U.S. Supreme Court
BAIL REFORM ACT
COURT APPEARANCE

U.S. v. Salerno, 107 S.Ct. 2095 (1987). The section of the Bail Reform Act of 1984 authorizing pretrial detention on the ground of future dangerousness is not facially invalid under the due process clause, ruled the United States Supreme Court. The provision does not violate substantive due process on the ground that it constitutes impermissible punishment before trial. Congress formulated the detention provisions not as punishment for dangerous individuals, but as a potential solution to the pressing problem of crimes committed by persons on release. The government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest. Moreover, the Act's extensive procedural safeguards are specifically designed to further the accuracy of the dangerousness determination, and are sufficient to withstand a facial challenge. The court noted that, to determine whether a restriction on liberty constitutes impermissible punishment or permissible regulation, the Supreme Court first looks to legislative intent. The due process clause does not categorically prohibit pretrial detention imposed as regulatory measure on ground of community danger, without regard to duration of detention. Although primary function of bail is to safeguard courts' role in adjudicating guilt or innocence of defendants, the Eighth Amendment does not categorically prohibit Government from pursuing other admittedly compelling interests through regulation of pretrial release. Finally, to determine whether Government's proposed conditions of release or detention are excessive, for Eighth Amendment purposes, the Supreme Court must compare Government's proposed conditions against interest Government seek to protect. (New York)

1989

U.S. District Court
BAIL FUND

Essex County Jail Inmates v. Amato, 726 F.Supp. 539 (D. N.J. 1989). The inmates of a county jail sued the county seeking imposition of sanctions for the violation of a consent judgment under which the county was to abide by overall population limits and population limits within sections of the jail, and to afford each inmate an opportunity for one hour of recreation per day. The District Court found that the imposition of fines for overcrowding based upon the agreed upon figure of $100 per day per inmate was warranted and the fine for the failure to provide recreational facilities, based on $20 per day per inmate affected, was warranted despite the claim that exercise opportunities could not be provided because of security concerns that prevented the installation of equipment in each tier. The court also ruled that the creation of a bail fund into which the county was required to make payments for the violation of the agreement with inmates which had been embodied in the consent judgment providing for a specified maximum number of inmates did not exempt the county from the independent need to maintain the population

at or below the specified cap. The bail fund was merely a stop-gap remedy for the problem. The impossibility of performance was not available to the county as justification for noncompliance with maximum inmate population limits embodied in the consent judgment. It was not physically impossible to meet the population goals and failure to do so was traceable to the county's unwillingness to take action. (Essex County Jail, New Jersey)

U.S. Appeals Court
DENIAL OF BAIL

McConney v. City of Houston, 863 F.2d 1180 (5th Cir. 1989). An arrestee for public intoxication brought a civil rights suit against the city and its chief of police. The U.S. District Court entered a judgment on the jury verdict in favor of the arrestee, and the city appealed. The appeals court, affirming in part and reversing in part, found that the city chief of police was entitled to qualified immunity from liability, but some evidence supported the finding that the city had an unconstitutional policy for detaining the warrantless arrestee for public intoxication for four hours even after determining that the arrestee was sober and had not been intoxicated. A policy requiring the continued detention of a public intoxication arrestee and denial of otherwise available bail after the determination beyond a reasonable doubt that the arrestee is in fact not intoxicated and that probable cause no longer exists raises obvious constitutional concerns, but the arrestee is not constitutionally required to be released immediately upon the ascertainment that he is clearly not intoxicated. It is permissible for the detaining authority to take a reasonable amount of time for administrative processing, the return of property, and making bail if appropriate. (Houston City Jail, Texas)

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Clark, 865 F.2d 1433 (4th Cir. 1989). Defendants charged with detaining and threatening to kill hostages and unlawfully making and possessing a sawed-off shotgun were denied bail after waiving an immediate detention hearing and the defendants moved for a review of the detention order. The U.S. District Court affirmed. On appeal, the appeals court reversed and remanded, ordering the trial court to release the defendants on appropriate conditions. On rehearing in banc, the court of appeals, affirming, found that both time requirements and the detention hearing itself provided for in the Bail Reform Act are waivable. Where the requirements of the Bail Reform Act are not properly met, the automatic release is not an appropriate remedy. The finding of insufficient conditions for release was supported by record. (North Carolina)

1990

U.S. District Court
BAIL FUND

Palmigiano v. DiPrete, 737 F.Supp. 1257 (D. R.I. 1990). In an ongoing litigation over the constitutionality of prison overcrowding, petitioners moved to find the defendants in continuing contempt of court and the defendants moved to modify the existing orders. The District Court found that immediate relief to alleviate overcrowding was required, including the maintenance of a fund to provide indigent detainees with bail, awarding 90 days of expedited good time and awarding additional good time every 30 days until conditions were mitigated. (Adult Correctional Institutions, Rhode Island)

1994

U.S. District Court
REVOCATION

U.S. v. Mackie, 876 F.Supp. 1489 (E.D. La. 1994). A defendant filed a motion for appeal of a magistrate's order and the district court found that the magistrate properly revoked the defendant's bond and remanded the defendant into custody. A superseding indictment supplied probable cause to believe that the defendant committed a federal crime while on pretrial release, and the defendant failed to rebut the presumption that no set of conditions would assure that the defendant would not pose danger to the safety of the community. (Louisiana)

1995

U.S. District Court
BAIL

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. 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
DENIAL OF BAIL
EXCESSIVE BAIL

Nowaczyk v. State of New Hampshire, 882 F.Supp. 18 (D.N.H. 1995). A state prisoner petitioned for a writ of habeas corpus based on a claim that the state court unconstitutionally denied bail and later set excessive bail. The district court found that the state court was not required to set any bail for the pretrial detainee who was a federal probationer at the time he was charged with new crimes. In addition, $250,000 was not an excessive amount to set for bail. The detainee was on federal probation and testimony indicated that the detainee had said that he intended to flee and had threatened the life of a witness. (New Hampshire)

1996

U.S. District Court
COURT
APPEARANCE

Gerakaris v. Champagne, 913 F.Supp. 646 (D.Mass. 1996). A plaintiff who was detained at a local police station and transferred to a county jail sued officials and law enforcement officers alleging he was threatened and intimidated in an attempt to prevent him from testifying against a public official, his father-in-law, in a grand jury investigation of professional misconduct. The district court held that the plaintiff stated a § 1983 claim based on alleged denial of free speech, deprivation of medical care, delayed booking, and conspiracy. Following an alleged concerted period of intimidation seeking to dissuade him from cooperating with the investigation of his father-in-law, the plaintiff was arrested at his mother's home for allegedly violating a restraining order. The plaintiff informed the arresting officers that he suffered from several illnesses, for which he was taking prescriptions. The officers refused to permit the plaintiff to retrieve his medications before transporting him to the police station. During his booking at the police station, the plaintiff complained again about his medical and dietary needs. Law enforcement officers deliberately delayed the plaintiff's booking until after the local court had closed, denying him an immediate appearance before a judge. (Peabody Police Station/Middleton House of Correction, Massachusetts)

1997

U.S. Appeals Court
BONDSMAN

Dean v. Olibas, 129 F.3d 1001 (8th Cir. 1997). An arrestee brought a state court action against a bail bondsman and the case was removed to federal district court. The district court entered judgment in favor of the arrestee and awarded $5,000 in compensatory damages and $70,000 in punitive damages. The district court also awarded nearly $20,000 in attorney fees and costs. The appeals court affirmed in part and reversed in part, finding that the bail bondsman was not liable for false imprisonment but that the full compensatory damages award was proper and the punitive damages award did not violate due process. The bondsman had posted a bond in Texas for a man claiming to be the plaintiff, but later learned that the man was probably the plaintiff's brother. The bondsman had the plaintiff arrested and detained in Arkansas but he was released when the warrant was dismissed. (Texas and Arkansas)

U.S. District Court
BOND

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

U.S. District Court
REVOCATION
CONDITIONS

U.S. v. Addison, 984 F.Supp. 1 (D.D.C. 1997). The United States applied to the court to have a defendant's pretrial release revoked because he violated a halfway house's rule against falsification by not reporting for work to the address to which he had signed out. The district court ordered the defendant detained, finding that it was unlikely that the defendant would abide by any condition or combination of conditions of release. (District of Columbia)

U.S. District Court
BAIL Reform Act
CONDITIONS

U.S. v. Barnett, 986 F.Supp. 385 (W.D.La. 1997). Officials sought the pretrial detention of two defendants who were charged with attempted murder for hire and conspiracy to commit murder for hire. The district court noted that the Bail Reform Act favors release over pretrial detention, and that there was no presumption against pretrial release for the defendants. The court granted pretrial release under the Act on the condition that each defendant and his family members, as sureties, execute appearance and compliance bonds in the amount of $500,000 and that each defendant comply with specific requirements, including surrender of his passport, reporting to a probation office, restriction of travel, and avoiding contact with all others involved with the scheme. (U.S. District Court, Western District, Louisiana)

U.S. District Court
BAIL REFORM ACT

U.S. v. Epps, 987 F.Supp. 22 (D.D.C. 1997). The district court held that determining whether a charged offense of possession of a firearm or ammunition by a felon is a "crime of violence" within the meaning of the Bail Reform Act, warranting a detention hearing. According

to the court, the determination turns on consideration of the nature of the charge presented in each specific case, and should not be decided categorically. (United States District Court, District of Columbia)

U.S. District Court
BAIL REFORM ACT

U.S. Jones, 980 F.Supp. 359 (D.Kan. 1997). The government sought a review of a magistrate judge's order releasing a defendant on bond pending trial. The district court held that the detention of the defendant pending trial was appropriate under the criteria set forth in the Bail Reform Act because the defendant had a prior conviction for solicitation to commit murder, had a history of violence and a history of narcotics related arrests, and the weight of evidence against the defendant was substantial. (U.S. District Court, Kansas)

U.S. District Court
BAIL REFORM ACT

U.S. v. Wray, 980 F.Supp. 534 (D.D.C. 1997). The government moved to detain a defendant prior to trial and the district court granted the motion. The court found that there was clear and convincing evidence that supported detention, including the defendant's criminal history and his committing crimes while on parole for violent offenses. (U.S. District Court, District of Columbia)

1998

U.S. Appeals Court
CONDITIONS
HOME DETENTION

Cucciniello v. Keller, 137 F.3d 721 (2nd Cir. 1998). A federal prisoner brought a habeas corpus petition seeking credit against his sentence for time spent in home confinement. The prisoner claimed he was not informed, when he accepted bail release, that his time spend in home confinement as a condition of release would not be credited against his sentence. The district court dismissed the petition and the appeals court affirmed. The appeals court held that statutes did not entitle the prisoner to credit for time spent in home confinement and that the absence of notice to the prisoner was not a due process violation. (Federal Bureau of Prisons)

U.S. District Court
REVOCATION
BOND

Love v. Ficano, 19 F.Supp.2d 754 (E.D.Mich. 1998). A murder defendant who was confined in a county jail pending the prosecution's appeal of a grant for a new trial, petitioned for habeas corpus relief, challenging the revocation of his bond by a state court of appeals. The district court granted relief, finding that the defendant was effectively a pretrial detainee for the purposes of entitlement to release pending appeal, and that defendant had a protected liberty interest in remaining at liberty on a bond granted by the trial court. (Wayne County Jail, Michigan)

U.S. District Court
BAIL REFORM ACT

U.S. v. Campbell, 28 F.Supp.2d 805 (W.D.N.Y. 1998). The district court granted the federal government's request for pretrial detention of a defendant charged with illegal possession of a firearm by a felon. The court held that the charge was a "crime of violence" for the purposes of the Bail Reform Act and that there were no conditions that would reasonably assure the safety of the community and another person, or the defendant's appearance. The court noted that a "categorical" rather than a "case-by-case" approach was most appropriate to determine whether a particular offense was a crime of violence; under the categorical approach the court looks only to the intrinsic nature of the offense itself as defined by the statute and does not consider any specific facts surrounding the alleged offense. (U.S. District Court, Western District, New York)

U.S. District Court
BAIL REFORM ACT

U.S. v. Carter, 996 F.Supp. 260 (W.D.N.Y. 1998). The government moved for a pretrial detention hearing for a defendant who was charged with weapons offenses. The district court denied the government's motion, finding that unlicensed dealing or importation of firearms across state lines was not a "crime of violence" and that the defendant did not pose a serious risk of flight because he was employed full-time and had no prior felony convictions. (U.S. District Court, Western District, New York)

U.S. District Court
BAIL REFORM ACT
DENIAL OF BAIL

U.S. v. DeBeir, 16 F.Supp.2d 592 (D.Md. 1998). The government moved for pretrial detention under the Bail Reform Act for a defendant who was charged with interstate travel for the purpose of engaging in a sexual act with a minor. The district court denied the motion, finding that the defendant did not pose a serious risk of flight and that the offense was not a crime of violence. (Maryland)

U.S. District Court
BAIL REFORM ACT

U.S. v. Floyd, 11 F.Supp.2d 39 (D.D.C. 1998). A defendant moved to revoke a magistrate's order of detention pending trial. The district court held that the charge of possession of a firearm by a felon is a crime of violence and that evidence was sufficient to warrant pretrial detention. (U.S. District Court, District of Columbia)

U.S. District Court
BAIL REFORM ACT

U.S. v. Gonzales, 995 F.Supp. 1299 (D.N.M. 1998). A defendant charged with conspiracy to distribute cocaine base, racketeering, and capital murder filed a motion for pretrial release. The district court denied the motion. The court found that even though the defendant lacked a criminal record and his family and friends offered significant assurances that he would appear for trial, the fact that the government sought the death penalty created a strong incentive for the defendant to flee prior to trial. The court also held that the fact that the defendant had

been incarcerated for 28 months and that delays could result in total pretrial incarceration of 35 to 37 months, did not amount to a due process violation requiring the defendant's pretrial release. (U.S. District Court, New Mexico)

U.S. District Court
REVOCATION
CONDITIONS

U.S. v. Herrera, 29 F.Supp.2d 756 (N.D.Tex. 1998). After a defendant who was on pretrial release tested positive for the use of a controlled substance, a pretrial services officer petitioned the court for revocation of release. A U.S. Magistrate dismissed the motion, and the district court affirmed. The district court noted that only an attorney for the government, not a pretrial services officer, may initiate a proceeding for revocation of release. (U.S. District Court, Northern District, Texas)

U.S. District Court
CONDITIONS
ELECTRONIC
MONITORING

U.S. v. Malloy, 11 F.Supp.2d 583 (D.N.J. 1998). A defendant charged with violating the Arms Export Control Act moved to modify his bail conditions. The district court granted his motion, finding that the defendant was entitled to have his bail conditions modified from 24-hour house arrest with electronic monitoring to the use of a satellite tracking system. The court found that the satellite tracking system provided a sufficient level of control over the defendant's whereabouts to assure that the defendant would appear at trial. (U.S. District Court, New Jersey)

U.S. District Court
BAIL REFORM ACT
DENIAL OF BAIL

U.S. v. Robinson, 27 F.Supp.2d 1116 (S.D.Ind. 1998). A defendant charged with being a felon in possession of a firearm moved for revocation of his pretrial detention order. The district court denied the order, finding that while the charge was not a "crime of violence" for the purposes of the Bail Reform Act, the defendant posed a serious risk of flight. The court noted the weight of evidence against the defendant, his substantial criminal record that included involuntary manslaughter and violent conflicts with the police, and the fact that the defendant had failed to keep scheduled court dates on seven prior occasions. (United States District Court, Southern District, Indiana)

U.S. District Court
BAIL

U.S. v. Thomas, 992 F.Supp. 782 (D.Virgin Islands 1998). A federal detainee appealed his detention in federal court. The district court remanded the case, finding that a magistrate judge was required to hold a hearing before determining whether to release the arrestee on bail. The court found that placement of a notation on the arrest warrant, "No Bond Recommendation, Govt to Move for Detention," did not preclude the right of the arrestee to seek bail in a hearing in the arresting jurisdiction. (Virgin Islands)

1999

U.S. District Court
BAIL REFORM ACT
DENIAL OF BAIL

U.S. v. Battle, 59 F.Supp.2d 17 (D.D.C. 1999). In a criminal proceeding the district court held that a defendant who had a history of committing crimes while on pretrial release represented a serious risk of flight and was thus subject to pretrial detention. The court noted that the defendant had been convicted of two violations of the Bail Reform Act for failing to appear when required. (U.S. District Court, District of Columbia)

U.S. District Court
DENIAL OF BAIL

U.S. v. Caraballo, 47 F.Supp.2d 190 (D.Puerto Rico 1999). The district court held that a defendant charged with aiding and abetting the distribution of multi-kilogram quantities of controlled substances was not entitled to bail pending trial. According to the court, the defendant was a flight risk given the potential for a life sentence, the government's case was presumptively strong due to cooperators, and the defendant's past conduct and criminal record overrode his community and family ties and employment. (United States District Court, Puerto Rico)

U.S. District Court
BAIL REFORM ACT

U.S. v. Enriquez, 35 F.Supp.2d (D.Puerto Rico 1999). A defendant challenged his pretrial detention and sought dismissal of his indictment alleging failure to comply with speedy trial requirements. The district court held that the defendant should be detained, noting that his alleged offense was serious and was punishable by up to life imprisonment, the weight of evidence against him was strong, and although he had family ties he also had a prior record of seven felonies. The court also found that the defendant's Sixth Amendment speedy trial rights were not violated, even though the earliest trial date was in July 1997, and the trial had not commenced as of January 1999. (United States District Court, Puerto Rico)

U.S. District Court
BAIL REFORM ACT

U.S. v. Lee, 79 F.Supp.2d 1280 (D.N.M. 1999). In a highly publicized case, a federal judge denied pretrial release to a scientist who was charged with violating the Atomic Energy Act and Espionage Act. The judge held that "I conclude that at this time there is no condition or combination or conditions of pretrial release that will reasonably assure the appearance of Dr. Lee as required..." (United States District Court, New Mexico)

U.S. District Court
HOME DETENTION

U.S. v. Rudisill, 43 F.Supp.2d 1 (D.D.C. 1999). A detainee who had been committed to the custody of the U. S. Department of Justice was brutally attacked by eight other inmates while detained at the Central Detention Facility of the District of Columbia Department of Corrections. He remained comatose in a hospital for nearly a month and was eventually released to his mother's care for outpatient treatment under a home detention program. The federal district

court determined that the detainee was no longer competent to stand trial and that he would not become competent in the foreseeable future. The court noted that the detainee appeared to have benefitted from his home confinement. (District of Columbia Central Detention Facility)

U.S. District Court
BAIL REFORM ACT

U.S. v. Sparger, 79 F.Supp.2d 714 (W.D.Tex. 1999). The government sought approval from a federal court to use bail money posted by a defense attorney as payment toward the defendant's unpaid fine. The district court denied the motion, finding that the attorney had posted the bond out the retainer money he was paid by the defendant and that the money therefore belonged to the defense attorney and could not be held by the government. (United States District Court, Western District, Texas)

2000

U.S. District Court
CONDITIONS
HOME DETENTION

U.S. v. Agnello, 101 F.Supp.2d 108 (E.D.N.Y. 2000). The government sought the review of a Magistrate Judge's order permitting a defendant to be released upon satisfaction of certain conditions and the defendant sought review of a release condition that a security guard be posted outside of his home 24 hours a day to monitor and search visitors. The district court revoked the release order, finding that no conditions of release contemplated by the Bail Reform Act would reasonably assure the safety of others persons and the community. (United States District Court, Eastern District, New York)

U.S. District Court
REVOCATION

U.S. v. Rivera, 104 F.Supp.2d 159 (D.Mass. 2000). After a defendant was found to have possessed and used marijuana not more than ten days after he appeared at a revocation hearing and received a stern warning from the judge, the court revoked his release and ordered him detained because he was unlikely to abide by any condition or combination of conditions of release. (U.S. District Court, Massachusetts)

U.S. District Court
CONDITIONS

U.S. v. Walters, 89 F.Supp.2d 1217 (D.Kan. 2000). After a magistrate judge granted pretrial release for a defendant indicted on drug conspiracy charges, the government appealed. The district court affirmed, finding that the defendant had offered a reasonable pretrial plan which provided for employment and a means of monitoring her compliance with the plan. The court noted that she was a long-time resident of the state where she was being tried and that she had family, including two children, in the state. (United States District Court, Kansas)

U.S. District Court
ALIEN
BAIL

Welch v. Reno, 101 F.Supp.2d 347 (D.Md. 2000). An alien petitioned for a writ of habeas corpus challenging his continued detention without a bail hearing. The district court granted the petition, finding that the statute denying a bail hearing for aliens taken into custody for firearms offenses violated substantive due process. (Wicomico County Detention Center, Maryland)

2001

U.S. District Court
CONDITIONS

Halikipoulos v. Dillion, 139 F.Supp.2d 312 (E.D.N.Y. 2001). Two defendants charged with petit larceny sought federal habeas corpus relief challenging a condition of their bail under which they were required to enroll in, and complete, a one-day "Stoplift" remediation and education program. The district court denied their petitions finding that the program did not result in the attachment of jeopardy for purposes of the double jeopardy clause and did not constitute "punishment" in violation of the due process clause. (Nassau County District Court, New York)

U.S. District Court
BAIL REFORM ACT

U.S. v. Silva, 133 F.Supp.2d 104 (D.Mass. 2001). A defendant was ordered detained pending trial after the district court held that he presented a risk of flight. The court noted that there was no evidence that the defendant's family would "in any way alter his propensity for involvement with criminal acts" or assure his appearance at future proceedings. The court also found that as an issue of apparent first impression, the defendant's juvenile adjudications would not support a criminal recidivism finding. (U.S. District Court, Massachusetts)

2002

U.S. District Court
ALIEN
BOND

Alaka v. Elwood, 225 F.Supp.2d 547 (E.D.Pa. 2002). A lawful permanent resident alien filed a petition for a writ of habeas corpus, challenging her continued detention by the Immigration and Naturalization Service (INS), pending removal proceedings. The district court granted the petition, finding that the detention of the alien without providing her with an opportunity for an individualized determination of her risk of flight or danger to the community, violated her substantive due process rights. (York County Prison, Pennsylvania)

U.S. Appeals Court
ALIEN
BOND

Doan v. I.N.S., 311 F.3d 1160 (9th Cir. 2002). A removable alien sought an injunction prohibiting the Immigration and Naturalization Service (INS) from imposing a bond upon him as a condition of his release, upon expiration of a six-month detention period once removal was no longer reasonably foreseeable. The district court denied the injunction and the alien appealed. The appeals court affirmed, finding that the INS could impose a bond, notwithstanding that the statute authorizing the terms of supervision did not expressly authorize a bond. (Southern

District of California)

U.S. District Court
BAIL REVIEW

Foster v. Fulton County, 223 F.Supp.2d 1301 (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 by ordering remedies. The county moved to stay the corrective actions that were ordered and the district court denied the motion. The court affirmed its requirement that the county develop a unified system for providing counsel within 72 hours of arrest to persons arrested on state law misdemeanor charges. The court also ordered the county to develop a meaningful discharge planning process for physically and mentally ill inmate. (Fulton County Jail, Georgia)

U.S. Appeals Court
ALIEN

Kim v. Ziglar, 276 F.3d 523 (9th Cir. 2002). A lawful permanent resident alien filed a habeas corpus petition challenging the no-bail provision of the Immigration and Nationality Act, under which he had been held for six months. The district court entered an order holding the statute unconstitutional on its face and directing the Immigration and Naturalization Service (INS) to hold a bail hearing. The government appealed and the appeals court affirmed, finding that the no-bail provision, as applied to the alien, violated the alien's due process right to an individualized determination of his risk of flight or danger to the community. (U.S. District Court, Northern District of California)

U.S. Appeals Court
FEES

Payton v. County of Kane, 308 F.3d 673 (7th Cir. 2002). Arrestees brought an action against two county jails that charged a bond fee, above and beyond the set bail amount, as a condition of their release. The district court dismissed the action and the arrestees appealed. The appeals court reversed and remanded. The appeals court held that the arrestees sufficiently satisfied their standing requirement by alleging violation of their Eighth and Fourteenth Amendment rights. The court noted that the arrestees suffered monetary injury when they were required to make the extra payments, and that these injuries could be traced to the policy of each jail. A 1999 Illinois law allowed a bond fee to be added to the required bond and set the fee at $1. The law empowered county boards to increase the statutory fee by ordinance if the increase is justified by an acceptable cost study that demonstrates that the $1 fee is not sufficient to cover the costs of providing the service. Nineteen of Illinois's 102 counties charged a bail fee at the time of the appeal. The plaintiff arrestees were charged $11 on one jail and $15 in another. (Kane County Jail and DuPage County Jail, Illinois)

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Ciccone, 312 F.3d 535 (2nd Cir. 2002). A defendant who was indicted on multiple racketeering and money laundering charges challenged denial of his pretrial release. The district court denied the defendant's request for release, but ordered him released from administrative confinement and returned to the general prison population. The appeals court affirmed in part and dismissed in part. The appeals court held that there was clear and convincing evidence that no bail conditions could ensure the community's safety. (Metropolitan Detention Center, Federal Bureau of Prisons, New York)

U.S. District Court
BAIL REFORM ACT
ALIEN

U.S. v. Goba, 220 F.Supp.2d 182 (W.D.N.Y. 2002). Prosecutors asked a federal district court to order the detention of defendants who were charged with conspiracy to provide material support for a foreign terrorist organization. The court granted the motion in part, and denied it in part. The court found that the dangerousness of some defendants was clearly and convincingly shown by evidence of their attendance at a five-week training session at an Afghanistan terrorist camp, but that one defendant rebutted this by showing that he had extricated himself from the terrorist camp and cooperated with authorities thereafter. (U.S. Dist. Court, Western District, New York)

U.S. District Court
BAIL REFORM ACT

U.S. v. Gotti, 219 F.Supp.2d 296 (E.D.N.Y. 2002). A defendant who had been indicted on multiple racketeering and money laundering charges was refused release from pretrial detention. The district court held that the defendant was a danger to the community because he was the leader of an organized crime family, and his leadership could not be curtailed by any condition or combination of conditions of release. (Eastern District, New York)

U.S. District Court
BAIL REFORM ACT
CONDITIONS

U.S. v. Hammond, 204 F.Supp.2d 1157 (E.D.Wis. 2002). A defendant moved to modify his bail and conditions of release. The U.S Magistrate reduced bail and set conditions of release and the government moved for revocation of the order. The district court denied the motion, finding that the government failed to show that the defendant was dangerous and that no conditions of release would reasonably assure the safety of the community, and that the conditions of release were insufficient. The defendant's bail was reduced to $135,500 (from $150,000) and he was required to submit to electronic monitoring, travel restrictions, random urine tests, and reporting to pre-trial services. He was also ordered not to associate with the Outlaws Motorcycle Club. (Eastern District, Wisconsin)

U.S. District Court
INITIAL APPEARANCE

U.S. v. McKinley, 228 F.Supp.2d 1158 (D.Or. 2002). A defendant charged with murder was arrested and detained at 10:40 a.m. on Friday and was not arraigned until the following Monday.

The district court held that the delay in bringing the defendant before a magistrate was not excessive. The court noted that it was 100 miles to the nearest magistrate and that authorities spent all day Friday conducting an investigation needed to support the charge. (Warm Springs Correctional Facility, Warm Springs Indian Reservation, Oregon)

2003

U.S. District Court
BAIL

Clynch v. Chapman, 285 F.Supp.2d 213 (D.Conn. 2003). An arrestee filed a § 1983 action arising from his arrest for driving under the influence. The district court granted summary judgment for the defendants, in part. The court held that city police officers' roles in setting the arrestee's bail were functionally comparable to that of a judge, and that the officers were entitled to absolute immunity from liability, even if they did not consider individualized circumstances. Under state law, officers were required to attempt to conduct an interview with the arrestee to obtain information relevant to the terms and conditions of his release from custody, before setting bail. The arrestee was a 69-year-old man who had lived his entire life in the same house, who was charged with Driving Under the Influence. He was taken to a police station where he was detained in a holding cell. The police officer ordered him held on a $500 surety bond and set a court date. (City of Derby, Connecticut)

U.S. District Court
DENIAL OF BAIL

Hedgepeth v. Washington Metro. Area Transit, 284 F.Supp.2d 145 (D.D.C. 2003). The mother of a 12-year-old girl who was arrested for eating a french fry in a rail transit station, brought a § 1983 action alleging equal protection and other violations. The district court entered judgment for the defendants. The court held that the city's "no citation" policy for juvenile offenses did not violate the daughter's equal protection rights. Adult violators were able to be released with a citation, while the law required juveniles to be arrested and detained. The 12-year-old ate one french fry in a transit station and she was arrested. The transit police officer searched the girl and her possessions and handcuffed her behind her back. The handcuffs remained on until she was released from the juvenile processing station several hours later. (Juvenile Processing Center, District of Columbia)

U.S. District Court
BAIL REFORM ACT
CONDITIONS

U.S. v. Al-Arian, 280 F.Supp.2d 1345 (M.D.Fla. 2003). Alleged members of a terrorist organization were charged with various violent crimes, including conspiracy to commit racketeering, conspiracy to kill, maim, or injure persons in a foreign country, and conspiracy to provide material support to a designated terrorist organization. The defendants were charged with being members of the Palestinian Islamic Jihad Shiqaqi Faction. The government moved to detain the defendants without bail under the Bail Reform Act. The district court denied bail to two defendants but granted it to two other defendants who posed lesser risks. The court ordered supervision by pretrial services, restricted their travel, ordered them to surrender their passports, and ordered them to refrain from any fund-raising activities unless they were specifically authorized by pretrial services. The court noted that the Bail Reform Act does not list the length of pretrial delay as a factor a court should consider in weighing the conditions of release, but that other courts had accepted the Second Circuit's reasoning that "at some point, under some circumstances, the duration of pretrial detention becomes unconstitutional." (U.S. District Court, Middle District, Florida)

U.S. District Court
BAIL REFORM ACT

U.S. v. Goba, 240 F.Supp.2d 242 (W.D.N.Y. 2003). Defendants who were charged with conspiring to knowingly provide material support and resources to a foreign terrorist organization and related crimes, moved to revoke a magistrate's detention order. The district court denied the motions, finding that the charges constituted a "crime of violence" under the Bail Reform Act, that the defendants posed a risk of flight, and that each defendant's attendance and training at a foreign terrorist organization's camp, in and of itself, rendered each defendant a danger to the community. (Federal Dist. Court, Western District, New York)

U.S. Appeals Court
ALIEN

Wang v. Ashcroft, 320 F.3d 130 (2nd Cir. 2003). An alien petitioned for habeas corpus relief, arguing that his removal to China would violate the United Nations Convention Against Torture (CAT), and that his continued detention without a bond hearing violated his due process rights. The district court denied relief and the alien appealed. The appeals court affirmed, finding that the alien failed to show that, as a result of his desertion from the Chinese military, he was more likely than not to be tortured if he was removed to China. The court also held that the alien's continued detention did not violate his substantive due process rights. The court noted that federal courts have jurisdiction under the general habeas corpus statute to consider claims arising under CAT. (U.S. Dist. Court for the District of Connecticut)

2004

U.S. District Court
DENIAL OF BAIL

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. (Iowa Department of Corrections)

U.S. District Court
DENIAL OF BAIL

Bunyon v. Burke County, 306 F.Supp.2d 1240 (S.D.Ga. 2004). A detainee brought a § 1983 action stemming from his arrest and the alleged refusal of jail authorities to release him on bail. The court denied summary judgment for the defendants on the issue of whether the sheriff's department failed to bring the detainee before a judicial officer within 72 hours after his arrest. The court held that the sheriff's department contravened state statutes and violated the detainee's procedural due process rights by refusing to release the detainee, despite his proffer of sufficient funds to post the amount of bail that had been set. (Burke County Jail, Georgia)

U.S. District Court
EXCESSIVE BAIL

Galen v. County of Los Angeles, 322 F.Supp.2d 1045 (C.D.Cal. 2004). A detainee arrested for domestic violence brought a § 1983 Eighth Amendment action alleging that bail of $1 million was excessive. The district court granted summary judgment in favor of the defendants. The court held that bail of $1 million, enhanced from the $50,000 bail listed in the county's felony bail schedule, was not excessive. The court noted that the alleged victim had both older and more recent injuries, including a seven-inch laceration, and allegedly feared for her safety. The detainee was a local attorney who had obtained bail within hours by paying $50,000 to post bond, and the option of denying bail was unavailable under state law. (Los Angeles County Sheriff's Department, California)

U.S. District Court
CONDITIONS
DENIAL OF BAIL

U.S. v. Scales, 344 F.Supp.2d 213 (D.Me. 2004). A district court revoked the release of a defendant. The court held that no conditions of release existed which could reasonably assure the defendant's appearance at trial on a weapons charge, even though home monitoring and third-party custody would reasonably have assured the safety of the defendant's domestic assault victims. The court noted that the defendant had apparently learned of a sealed indictment against him and had taken steps to elude arrest, had a history of violating state-imposed conditions of release or defaulting on appearance requirements, and was confronting his first serious imprisonment time since becoming an adult. (Maine)

2005

U.S. Appeals Court
BAIL
FAILURE TO APPEAR

Dobrek v. Phelan, 419 F.3d 259 (3rd Cir. 2005). A commercial bail bondsman brought an action against the clerk of a state superior court, contending that the clerk wrongfully removed his name from the bail bondsman registry following the discharge of his bail bond debts in a chapter 7 bankruptcy proceeding. The district court dismissed the action and the bail bondsman appealed. The appeals court affirmed, finding that the judgments against the commercial bail bondsman which arose from bond debts were "forfeitures," excepted from discharge in a chapter 7 proceeding. The court noted that the judgments against the bondsman arose from the failure of criminal defendants to appear in court and the bondsman's nonperformance of his duty to produce those defendants. (New Jersey)

U.S. District Court
CONDITIONS

McLaurin v. New Rochelle Police Officers, 368 F.Supp.2d 289 (S.D.N.Y. 2005). An arrestee brought a § 1983 action against a county, alleging constitutional and state law violations after being released on bail. The district court dismissed the case. The court held that the arrestee who alleged adverse conditions of release on bail, failed to establish a policy or custom of the county that deprived him of his civil rights. The court noted that the court system, rather than county government, was responsible for setting bail. The arrestee alleged that he was forced, as a condition of bail, to attend a domestic violence program, and that he and another black man were the only persons who were at the program as a condition of bail. (Westchester County, New York)

U.S. Appeals Court
PRETRIAL RELEASE

Russell v. Hennepin County, 420 F.3d 841 (8th Cir. 2005). A detainee sued a sheriff, deputies, inspectors and a county, alleging that his six-day prolonged detention at a county detention center violated his Fourth and Fourteenth Amendment rights and constituted false imprisonment under state law. The district court granted the county's motion for summary judgment and the detainee appealed. The appeals court affirmed. The court held that the detention center's policy regarding the monitoring of inmates who were subject to conditional release was not deliberately indifferent to inmates' constitutional rights because of the lack of policies to expedite the process

of conditional release. The court found that the detainee failed to establish that the detention center's policy regarding the monitoring of inmates who were subject to conditional release caused his prolonged detention, where at worst, his detention for six additional days resulted not from the executing of the policy, but from the failure to assiduously follow the policy. The court held that the detainee did not demonstrate municipal liability where he failed to show a widespread pattern of failing to follow the "check daily" policy with respect to detainees subject to conditional release. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
BAIL

Sizer v. County of Hennepin, 393 F.Supp.2d 796 (D.Minn. 2005). An arrestee sued a county and county officials asserting a state claim for false imprisonment and violations of state and federal constitutional rights. The arrestee complained that his 10½ hour detention pending release on bail was unreasonable. The court granted summary judgment in favor of the defendants. The court held that the 10½ hour detention was objectively reasonable and not unconstitutional. The court found that the arrestee failed to prove a continuing, widespread, persistent custom or practice of unconstitutional over-detentions, despite an alleged sign posted in a waiting area that alerted inmates that they could expect delays of up to eight hours in processing their releases. The county responded that the arrestee's processing was delayed by problems with its security count, which halted out-processing of detainees for two hours. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
PRETRIAL RELEASE
VICTIM

U.S. v. Marcello, 370 F.Supp.2d 745 (N.D.Ill. 2005). In a pretrial detention hearing, the government asked the court for permission to have the son of the murder victim offer an oral statement opposing the release of the defendants. The district court denied the request, finding that the statute that allows crime victims to be "reasonably heard at any public proceeding in the district court involving release, plea, sentencing or any parole hearing" did not mandate oral presentation of a victim statement. The court noted that a written statement could be considered, but that the statement was not material to the "decision at hand." (U.S. District Court, Northern District of Illinois)

U.S. Appeals Court
CONDITIONS
PRETRIAL RELEASE
SEARCHES

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)

2006

U.S. District Court
BAIL

In re Extradition of Chapman, 459 F.Supp.2d 1024 (D.Hawai'i 2006). Bail bondsmen and television personalities arrested at the behest of Mexico, moved for bail pending hearing on Mexico's request for their extradition. The district court held that the defendants were entitled to bail. (Hawai'i)

U.S. District Court
ALIEN
CONDITIONS
HOME DETENTION

Nguyen v. B.I. Inc., 435 F.Supp.2d 1109 (D.Or. 2006). Aliens from Cuba and Vietnam, who had final orders of removal and had been released from custody on general orders of supervision, but who had violated their orders by committing crimes, petitioned for a writ of habeas corpus challenging the validity of the Department of Homeland Security's (DHS) Intensive Supervision Appearance Program (ISAP). The district court denied the petition, holding that: (1) ISAP regulations requiring participating aliens to remain in their residences between eight and 12 hours per day was not "detention" outside the statutory authority of Immigration and Customs Enforcement (ICE); (2) ISAP requirements did not violate the aliens' liberty interests under the Fifth Amendment; (3) placement of the aliens in ISAP did not violate their procedural due process rights; and (4) ISAP was not subject to Administrative Procedure Act (APA) requirements. (Department of Homeland Security (DHS)'s Intensive Supervision Appearance Program, Oregon)

U.S. District Court
BOND

Olibas v. Gomez, 481 F.Supp.2d 721 (W.D.Tex. 2006). Bail bondsmen sued a sheriff and county, alleging breach of a prior settlement agreement and new violations of § 1983, in violation of their First and Fourteenth Amendment rights under the United States Constitution, and breach of their right of free speech under the Texas Constitution. The sheriff moved to dismiss. The district court denied the motion. The court held that the bail bondsmen stated a § 1983 claim for a First Amendment violation against the sheriff, despite his argument that they had failed to identify a

variety of details. According to the court, the Texas Constitution protected the right to earn a living by writing bail bonds, and thus, the bail bondsmen's ability to have their bail bonds accepted at a county jail was a property or liberty interest protected by the Fourteenth Amendment's Due Process Clause. The bondsmen alleged that the sheriff allowed other bonding companies to continue writing bail bonds in the county while denying such privileges to them. (Reeves County, Texas)

U.S. District Court
BOND

White v. *Crow Ghost*, 456 F.Supp.2d 1096 (D.N.D. 2006). An arrestee brought a *Bivens* action against personnel of a jail operated by the Bureau of Indian Affairs (BIA), alleging failure to provide adequate medical care, unsanitary conditions, and delayed or prevented bond hearings. The district court granted summary judgment for the defendants. The court held that, absent any evidence that any of the named jail officials were responsible for the delay in the arrestee's bond hearing and subsequent failures to respond to his numerous requests for a bond reduction, the arrestee's bare allegations of such delay and failures were insufficient to demonstrate the deliberate indifference necessary to establish the violation of any constitutional right against excessive bail. (Standing Rock Agency, Fort Yates Detention Center, North Dakota)

2007

U.S. Appeals Court
EXCESSIVE BAIL

Galen v. *County of Los Angeles*, 477 F.3d 652 (9th Cir. 2007). A domestic violence arrestee brought a § 1983 Eighth Amendment action against a county, county sheriff, and individual sheriff's deputies, alleging that bail of $1 million was excessive. The district court granted summary judgment in favor of the defendants and awarded attorney fees in favor of the defendants. The arrestee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that bail was not excessive, and that the deputy who requested a bail enhancement and the deputy's superior who authorized the enhancement request were entitled to qualified immunity. The court held that individual sheriff's deputies were not entitled to the award of attorney fees under § 1988, but that the arrestee's post-discovery litigation of a *Monell* claim was frivolous, supporting the award of attorney fees to the county. (Los Angeles County Sheriff's Department, California)

U.S. Appeals Court
BAIL

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)

2008

U.S. District Court
EXCESSIVE BAIL

Garson v. *Perlman*, 541 F.Supp.2d 515 (E.D.N.Y. 2008). A state prison inmate, who had sought bail pending the direct appeal of his bribery conviction, sought federal habeas relief after a state court denied his motion. The inmate alleged violation of the Eighth Amendment's Excessive Bail Clause and a substantive due process violation. The district court dismissed the case. The court held that the Excessive Bail Clause does not encompass bail pending appeal. The court found that the inmate did not have a protected liberty interest in bail pending appeal, precluding his due process claim. (Mid-State Correctional Facility, New York)

U.S. Appeals Court
BAIL

Hampton Co. Nat. Sur., LLC v. *Tunica County, Miss*., 543 F.3d 221 (5th Cir. 2008). A surety company and its agents, who were white, brought a § 1983 action against an African-American county sheriff in his individual capacity and against the county, alleging that the sheriff's removal of the agents from the roster of approved bail bond agents in the county constituted First Amendment retaliation and violated the Fourteenth Amendment's due process and equal protection clauses. The district court granted summary judgment for the defendants and the plaintiffs appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the sheriff was entitled to qualified immunity on the due process claim since there was no clearly established law in the state as to whether the agents had a property right to issue bonds in a particular county, and thus no clearly established law that would render the sheriff's actions objectively unreasonable. The court found that the county was potentially liable since, under the governing state's law, sheriffs were final policymakers with respect to all law enforcement decisions made within their counties, and the sheriff's decision was the type of single decision by a relevant policymaker that could form the basis of § 1983 "municipal" liability. According to the court, summary judgment was precluded by a fact issue as to whether the African-American sheriff failed to place the agents back on the approved roster after they satisfied the arrearages that had given rise to their removal, while simultaneously reinstating black bail bond agents who had been removed for the same reason. The court also found that there were fact issue as to the credibility of the sheriff's stated reason for not reinstating the bail bond agents, namely that the agents had failed to satisfy arrearages that had given rise to removal. (Tunica County, Mississippi)

U.S. District Court
EXCESSIVE BAIL

Hernandez v. *Carbone*, 567 F.Supp.2d 320 (D.Conn. 2008). An indigent arrestee brought an action against the director of Connecticut court support services, alleging violations of § 1983, the Eighth Amendment, and the Fourteenth Amendment arising from the arrestee's nearly year-long pre-trial detention, during which time the arrestee was unable to post bail, before charges were dropped. The director moved to dismiss. The district court granted the motion. The arrestee alleged that the director caused his bail to be set at $100,000. The court held that the director's alleged misconduct in adopting unconstitutional policies and practices did not cause the arrestee's bail to be set so high or cause detention. The court held that it was required to abstain from deciding the arrestee's facial constitutional challenges to Connecticut's bail system. The court noted that the sentencing judge not only ignored a bail commissioner's recommendation for a much lower bail, in an amount that was also requested by the arrestee's counsel, but he also ignored the bail commissioner's statement that the arrestee could not post any bail, and at a subsequent bail reduction hearing the judge declined to reduce the arrestee's bail. (Connecticut's Court Support Services Division, City of Hartford)

2009

U.S. Appeals Court
BOND
DELAY

Campbell v. *Johnson*, 586 F.3d 835 (11th Cir. 2009). An inmate whom a jail allegedly refused release on bail after a court approved a property bond, sued a sheriff under § 1983, claiming violation of his constitutional rights. The sheriff moved for summary judgment. The district court granted the motion in the sheriff's favor on the constitutional claims and against him in his official and individual capacities. The inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the sheriff personally participated in the inmate's alleged false imprisonment, The court noted that the parties disputed whether the sheriff directed the jail not to accept property in satisfaction of the inmate's bail bond, and whether the sheriff knew that property had been judicially approved prior to the date he sent a brief memorandum advising a corrections officer at the jail to accept a property bond. The appeals court held that the district court decision sidestepped the issue of whether the sheriff had the authority in the first instance to modify the conditions of the prisoner's bail, and there was little evidentiary basis for the conclusion that an in-county property requirement was not excessive. (Walton County Jail, Florida)

U.S. Appeals Court
BOND
DELAY

Harper v. *Sheriff of Cook County*, 581 F.3d 511 (7th Cir. 2009). A former detainee filed a class action against a sheriff, claiming that new detainees remanded to the sheriff's custody after a probable cause hearing were unconstitutionally required to undergo intake procedures at the county jail before release on bond. The district court certified the class and the sheriff appealed. The appeals court vacated and remanded. The court held that the former detainee's class action lacked a predominance of common issues, precluding certification of the class, where the detainee had not challenged any particular intake procedure. The court noted that the reasonableness of the delay between posting bond and release and the reasonableness of the time and manner of assigning identification numbers prior to release required individual determinations based on the length of delay for each detainee and the conditions and exigencies of the jail existing on that particular day. According to the court, resolution of an equal protection claim could be satisfied in an individual suit. The court noted that the detainee was not interested in a large damage award, and his constitutional claims required individualized liability and damages determinations that could be better litigated in an individual suit. (Sheriff of Cook County, Cook County Jail, Illinois)

U.S. District Court
BRA- Bail Reform Act
CONDITIONS

U.S. v. *Cossey*, 637 F.Supp.2d 881 (D.Mont. 2009). After prerelease conditions mandated by the Adam Walsh Child Protection and Safety Act (AWA) amendments to the Bail Reform Act were imposed on a defendant indicted on charges of receiving and possessing child pornography, the defendant moved for a declaration that the AWA amendments were unconstitutional. The district court denied the motion. The court held that the AWA amendments did not violate the Excessive Bail Clause, the Due Process Clause, or separation of powers principles as applied to the defendant. The amendments mandated that certain prerelease conditions be imposed on persons accused of receiving child pornography. The court noted the conditions were not imposed on the defendant as a blanket prescription without making an individualized determination, and the conditions imposed did not unduly restrict the defendant's movement or interfere with his ability to work. (Montana)

2010

U.S. Appeals Court
DENIAL OF BAIL

Dodds v. *Richardson*, 614 F.3d 1185 (10th Cir. 2010). An arrestee filed a § 1983 action against a former county sheriff, in his individual capacity, for alleged violation of his Fourteenth Amendment due process rights by depriving the arrestee of his protected liberty interest in posting bail. The district court denied summary judgment for the sheriff as to qualified immunity and the sheriff appealed. The appeals court affirmed. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the arrestee's due process rights were violated by deprivation of his protected liberty interest in posting preset bail during his detention in the county jail. The court also found a genuine issue of material fact as to whether the county sheriff caused the deprivation of the arrestee's due process rights by the sheriff's personal involvement in maintaining policies at the county jail that prohibited the arrestee from posting preset bail during his detention. (Logan County Jail, Oklahoma)

U.S. District Court
DENIAL OF BAIL

Schneyder v. *Smith*, 709 F.Supp.2d 368 (E.D.Pa. 2010). A detainee who was being held as a material witness whose testimony was vital to a homicide prosecution brought a civil rights action against the prosecutor who had secured the material witness warrant for her arrest, alleging the prosecutor failed to notify the judge that the case had been continued for nearly four months. The detainee sought her release. The district court granted the

prosecutor's motion to dismiss in part and the detainee appealed. The appeals court reversed and remanded. On remand, the district court denied the prosecutor's motion for summary judgment. The court held that the detainee had a clearly established constitutional right to be free from detention without probable cause and that a triable issue existed regarding whether a reasonable prosecutor would have been aware of her duty to inform the judge of the status of any detained material witness. The detainee had sought bail, but at the bail hearing, the judge articulated his dislike for "setting bail on people who are not accused of a crime." In open court, he told the plaintiff, "[i]f the case breaks down, let me know early and I'll let you out." (Philadelphia, Pennsylvania)

2011

U.S. District Court
DELAY

Barnes v. *District of Columbia*, 793 F.Supp.2d 260 (D.D.C. 2011). Inmates at local jails brought a putative class action, under § 1983, against the District of Columbia, alleging that their over-detentions violated their Fourth, Fifth and Eighth Amendments rights. Following certification of the over-detention class, the parties moved and cross–moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the District of Columbia's over-detention of jail inmates did not constitute a "seizure," precluding § 1983 claims alleging Fourth Amendment violations related to over-detentions stemming from the time it took to process inmates' court–ordered releases. The court noted that the inmates were already in custody at the time they were ordered released or their sentences expired, such that their freedom of movement had already been terminated, and there was no evidence that the plaintiffs' over-detentions involved fresh "seizures" warranting a Fourth Amendment analysis. The court found that the District of Columbia's enforcement of a local ordinance with a "10 p.m. cut-off" rule, under which jail inmates were kept overnight if their court–ordered releases were not processed prior to 10 p.m., violated the inmates' substantive due process rights for purposes of a § 1983 action. According to the court, the enforcement of the rule resulted in over-detention of individuals who were entitled to release, such over-detentions were not the result of necessary administrative tasks or other reasonable delays, and the District could have promoted a claimed interest in inmate welfare while simultaneously respecting the entitlement of persons with court orders for release to prompt release.

The court held that the District of Columbia violated the inmates' substantive due process rights, for the purposes of a § 1983 action, by over-detaining inmates and failing to release them by the end of the day on which they were entitled to release. According to the court, although processing of releases generally should have taken between two and two–and–a–half hours to complete, the average over-detention time for inmates was approximately 36 hours, even though the District was on notice, via another litigation involving over-detention, that prevailing release practices were deeply inadequate and that a fundamental change was required.

The court found that a significant reduction in the number of over-detentions after the District of Columbia implemented measures to improve the manner in which inmate releases were processed demonstrated that the District was not deliberately indifferent to inmates' substantive due process rights, precluding the inmates' § 1983 action against the District. (District of Columbia Department of Corrections)

U.S. Appeals Court
ALIEN
BOND

Diouf v. *Napolitano*, 634 F.3d 1081 (9th Cir. 2011). A Senegalese detainee, who was subject to a voluntary departure order or an alternate removal order, filed a petition for a writ of habeas corpus requesting a preliminary injunction for immediate release from prolonged immigration detention. The district court denied the petitioner's motion, and the petitioner appealed. The appeals court reversed and remanded. The court held that an alien subject facing prolonged detention is entitled to a bond hearing before an immigration judge and is entitled to be released from detention unless the government establishes that the alien poses a risk of flight or a danger to the community. (U.S. Immigration and Customs Enforcement, San Pedro Detention Facility, California)

U.S. District Court
EXCESSIVE BAIL

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 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. (Univ. of California, Berkeley)

U.S. District Court
ALIEN
BOND
PRETRIAL RELEASE

Rivas v. *Martin*, 781 F.Supp.2d 775 (N.D.Ind. 2011). A female detainee brought a § 1983 action against a sheriff and jail officials, alleging they violated her right to due process by detaining her beyond their authority to do so. The district court denied the defendants' motion to dismiss. The court held that the detainee stated a § 1983 claim for violation of her right to due process by alleging that the sheriff and jail officials held her, after she had posted bond, without a probable cause determination for five days beyond the 48 hour limit in her immigration detainer. The court found that the defendants were not entitled to qualified immunity because the defendants allegedly violated the detainee's clearly established constitutional rights. (LaGrange County Jail, Indiana)

U.S. District Court
ALIEN
BAIL

Tkochenko v. *Sabol*, 792 F.Supp.2d 733 (M.D.Pa. 2011). An immigration detainee filed a petition for a writ of habeas corpus seeking review of her continuing custody by immigration officials. The district court granted the petition. The court held that although the immigration detainee, a native and citizen of Ukraine who was convicted of possessing small quantities of drugs, was subject to immigration laws' mandatory detention provisions applicable to aliens convicted of drug offenses, the two-year duration of her detention by immigration officials pending entry of a final removal order offended due process considerations. The court held that the detainee was entitled to federal habeas relief in the form of bail consideration. The court noted that the detainee's detention was almost five times the typical 5-month length of detention acknowledged as presumptively reasonable by the Supreme Court, and the lengthy period of detention was largely attributable to litigation decisions made by the government, and the period of detention had no fixed, finite, or identifiable duration. (York County Prison, Pennsylvania)

2012

U.S. Appeals Court
EXCESSIVE BAIL
BAIL SCHEDULE

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. Appeals Court
BOND

Gay v. *Chandra*, 682 F.3d 590 (7th Cir. 2012). A prisoner sued three mental health professionals at the prison alleging constitutionally inadequate treatment and retaliation for a prior lawsuit. The district court required the cost bond without evaluating the merit or lack of merit of the prisoner's claims, and then dismissed the case with prejudice when prisoner did not post the bond he could not afford, and the prisoner appealed. The appeals court reversed and remanded. The court held that the district court abused its discretion in failing to consider the prisoner's current ability to afford a bond before requiring one as a condition of prosecuting a civil rights lawsuit. The court noted that a court's authority to award costs to a prevailing party implies a power to require the posting of a bond reasonably calculated to cover those costs, even though no statute or rule expressly authorizes such an order. The court may require a bond where there is reason to believe that the prevailing party will find it difficult to collect its costs when the litigation ends. The appeals court described the plaintiff as a "deeply disturbed Illinois inmate with a long history of self-mutilation." (Tamms Correctional Center, Illinois)

U.S. Appeals Court
BOND
COURT
APPEARANCE

Holloway v. *Delaware County Sheriff*, 700 F.3d 1063 (7th Cir. 2012). An arrestee brought a § 1983 action, alleging that a sheriff, who was sued in his official capacity, violated his rights by detaining him without charges for nine days, The district court granted summary judgment for the sheriff and the arrestee appealed. The appeals court affirmed. The appeals court held that the sheriff did not violate the substantive due process rights of the arrestee, where the sheriff brought the arrestee before court for an initial hearing within 72 hours of his arrest, followed the court's order in holding the arrestee without bond, and released the arrestee promptly, within 72 hours of the initial hearing, excluding intervening weekend days, when the prosecutor did not file charges within the time permitted by the court. (Delaware County Jail, Wisconsin)

U.S. District Court
ALIEN
CONDITIONS
COURT
APPEARANCE
DENIAL OF BAIL

Leslie v. *Holder*, 865 F.Supp.2d 627 (M.D.Pa. 2012). An alien, a native, and citizen of Jamaica, petitioned for a writ of habeas corpus contending that his continued detention by United States Immigration and Customs Enforcement (ICE) for four years without a bond hearing was unconstitutional. The district court denied the petition. The alien appealed. The appeals court reversed and remanded for the purpose of a bond hearing. The district court released the alien on bond with conditions. The court held that the alien was entitled to the grant of bail, pending a final removal order. The court noted that although the alien had prior drug convictions and a history of drug abuse, all of the convictions were over a decade old, the alien suffered from multiple health problems, including degenerative spine disease, high blood pressure, and gastro-intestinal ailments, he credibly asserted that the passage of time and his age of 59 years tempered his conduct, the alien earned his high school equivalency certificate in prison, he participated in drug treatment and counseling, one immigration judge had found that the alien had learned his lesson and was not a danger to community, the alien had an extensive and supportive family in the United States, two family members agreed to serve as custodians for the alien upon his release, and the habeas claim that he was subjected to unreasonably prolonged detention had substantial merit. The court imposed bail conditions that the alien not violate any laws while on release, that the alien advise the District Court and immigration officials before making a change of residence or phone number, that the alien appear as required for removal proceedings, that the alien be supervised by immigration authorities, and that the alien be released to the custody of a third-party custodian, the alien's sister-in-law, who was required to certify that she would ensure the alien's compliance with all bail conditions. (United States Immigration and Customs Enforcement, Pennsylvania)

U.S. District Court
BAIL REFORM ACT

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
EXCESSIVE BAIL
HOME DETENTION

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)

2013

U.S. District Court
ALIEN
BOND

Gordon v. *Johnson*, 991 F.Supp.2d 258 (D.Mass. 2013). An alien, a lawful permanent resident who was subjected to mandatory detention pending removal five years after his arrest for narcotics possession, petitioned for a writ of habeas corpus on his own behalf and on behalf of a class of similarly situated individuals, seeking an individualized bond hearing to challenge his ongoing detention. The government moved to dismiss. The district court allowed the petition, finding that the phrase "when the alien is released" in the statute authorizing mandatory detention of criminal aliens meant "at the time of release," and that the petitioner was entitled to a bond hearing for consideration of the possibility of his release on conditions. (Franklin County Jail and House of Correction, Secretary of the Department of Homeland Security, Sheriff of Bristol County, Sheriff of Plymouth County, Sheriff of Suffolk County, Massachusetts)

U.S. District Court
ALIEN
COURT
APPEARANCE
DENIAL OF BAIL

Johnson v. *Orsino*, 942 F.Supp.2d 396 (S.D.N.Y. 2013). An alien, a native of Jamaica, filed a habeas petition challenging his detention in the custody of the Bureau of Immigration and Customs Enforcement (ICE) pending final determination of his removal proceedings. The district court denied the petition. The court held that the alien, who was deportable by reason of having committed a statutorily enumerated drug offense, was subject to the Immigration and Nationality Act's (INA) mandatory detention provision even though he was not taken into custody by an ICE until nearly four years after he was released from criminal custody. The court found that the fifteen-month detention of the alien during removal proceedings, without an individualized bond hearing, was not unreasonably long in violation of due process, and that the public-safety concern of risk of flight justified continued detention of the alien. (Orange County Jail, New York)

U.S. District Court
BAIL
COURT
APPEARANCE

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. (East Baton Rouge Prison, Louisiana)

U.S. District Court
ALIEN
COURT APPEARANCE

Pujalt-Leon v. *Holder*, 934 F.Supp.2d 759 (M.D.Pa. 2013). A detainee of the Bureau of Immigration and Customs Enforcement (ICE) filed a petition for a writ of habeas corpus, challenging ICE's determination that he was subject to mandatory detention and seeking bond hearing. The court held that the detainee was entitled to bond hearing. According to the court, clear unambiguous language demonstrated that Congress intended to give the Attorney General the authority of mandatory detention only if the government took an alien immediately when the alien was released from custody resulting from enumerated offense. (Bureau of Immigration and Customs Enforcement, Pennsylvania)

U.S. Appeals Court
ALIEN
DENIAL OF BAIL

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. District Court
ALIEN
BOND

Rosciszewski v. *Adducci*, 983 F.Supp.2d 910 (E.D.Mich. 2013). A lawful permanent resident (LPR) petitioned for a writ of habeas corpus, challenging his continued detention in a county jail without a bond hearing, upon the recent reopening of his deportation case after it lay dormant for 15 years. The district court granted the petition. The district court held that the District Director of Immigration and Customs Enforcement (ICE) in the district in which the alien was being detained was the proper respondent, not the warden of the jail in which the alien was being held. The court found that the provision of the Immigration and Nationality Act (INA) that required mandatory detention of a criminal alien during the pendency of removal proceedings did not apply to the alien, a citizen of Canada and a lawful permanent resident (LPR), who had been taken into immigration custody 15 years after his deportation case had lay dormant, and, thus, the alien was entitled to an individualized bond hearing before an immigration judge. (Calhoun County Jail, Michigan)

U.S. District Court
ALIEN
BOND

Straker v. *Jones*, 986 F.Supp.2d 345 (S.D.N.Y. 2013). An alien, who had been detained by the Department of Homeland Security (DHS) under a statute that called for mandatory detention by DHS of any alien who had been convicted of certain crimes "when the alien is released," petitioned for a writ of habeas corpus ordering the administrator of a correctional facility to provide the alien with a bond hearing. The district court granted the petition. The court noted that the detained alien was not required to exhaust administrative remedies, by making an argument before an Immigration Judge that he had not been "released," within the meaning of the statute, before making such argument before the district court on a petition for habeas corpus, since making such an argument before an Immigration Judge would have been futile, as the Immigration Judge would have been bound to follow a contrary precedent from the Board of Immigration Appeals (BIA). (Orange County Correctional Facility, New York)

2014

U.S. District Court
ALIEN

Gayle v. *Johnson*, 4 F.Supp.3d 692 (D.N.J. 2014). Aliens brought a class-action lawsuit against the Department of Homeland Security (DHS) and numerous other federal and state government agencies, alleging that the defendants' acts of subjecting individuals to mandatory immigration detention violated the Immigration and Nationality Act (INA) and the Due Process Clause. The government moved to dismiss. The district court declined to dismiss the alien's claims for injunctive relief, finding that the aliens had standing to challenge the adequacy of the *Joseph* hearing and associated mandatory detention procedures, and that allegations that the Joseph hearings failed to afford aliens adequate protection were sufficient to state claims for due process violations. (Department of Homeland Security, Immigration and Customs Enforcement, District of New Jersey)

U.S. Appeals Court
ALIEN
DENIAL OF BAIL

Lopez-Valenzuela v. *Arpaio*, 770 F.3d 772 (9th Cir. 2014). A felony arrestee brought an action against state officials challenging the constitutionality of an Arizona constitutional provision prohibiting state courts from setting bail for detainees who were in the United States illegally. The district court granted summary judgment and partial dismissal in the officials' favor, and the arrestees appealed. The appeals court affirmed. On rehearing en banc, the appeals court reversed and remanded. The court held that the Arizona constitutional provision forbidding any form of bail or pretrial release to undocumented immigrants arrested for serious felony offenses, without regard to whether they were dangerous or a flight risk, was not narrowly tailored to serve a compelling state interest in ensuring that persons accused of crimes be available for trial, and thus violated substantive due process. The court noted that there was no evidence that the provision was adopted to address a particularly acute problem regarding an unmanageable flight risk of undocumented immigrants, the provision encompassed an exceedingly broad range of offenses, including not only serious offenses but also relatively minor ones, and the provision employed an overbroad, irrebuttable presumption, rather than an individualized hearing, to determine whether a particular arrestee posed an unmanageable flight risk. (Maricopa County Sheriff, Maricopa County Attorney, and Presiding Judge of the Maricopa County Superior Court)

U.S. District Court
ALIEN
BOND
DELAY
APPEARANCE

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 Enf., Mass.)

U.S. District Court
BAIL

Villars v. *Kubiatowski*, 45 F.Supp.3d 791 (N.D.Ill. 2014). A detainee, a Honduran citizen who had been arrested for driving under the influence and fleeing officers after they effectuated a traffic stop of his vehicle, and subsequently had been held on an immigration detainer from Immigration and Customs Enforcement (ICE) and then on a federal material witness warrant, brought a pro se action against a village, police chief, police officers, sheriff, jail deputies, and an Assistant United States Attorney. The detainee alleged violation of his due process, equal protection, Fourth Amendment, and Eighth Amendment rights. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The district court held that: (1) the detainee stated a claim against the village defendants for violation of his Fourth Amendment and due process rights in connection with his detention after he had posted bond; (2) the detainee stated a claim for violation of his consular rights under Article 36 of the Vienna Convention on Consular Relations; (3) the detainee stated a claim against the county defendants for violation of his Fourth Amendment and due process rights in connection with his 29-hour detention; and (4) absolute prosecutorial immunity did not shield the AUSA from the plaintiff's claims that the AUSA violated his Fourth Amendment and due process rights, along with the federal material witness statute and the federal rules of criminal procedure. The court noted that following the detainee's post-arrest transfer to the county's custody, he was detained for approximately 29 hours pursuant to an Immigration and Customs Enforcement (ICE) detainer request, and that the county lacked probable cause that the detainee had violated a federal criminal law, but instead detained him while the federal government investigated to determine whether or not he had, in violation of the detainee's Fourth Amendment and procedural and substantive due process rights. (Village of Round Lake Beach, Lake County Jail, Illinois)

2015

U.S. District Court
COURT
APPEARANCE
PRETRIAL RELEASE

Fant v. *City of Ferguson*, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city's policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents' Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city's failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly stated a pattern and practice of Due Process violations; (4) allegations of conditions of confinement were sufficient to state a plausible claim for Due Process violations; and (5) the residents could not state an Equal Protection claim for being treated differently, with respect to fines, than civil judgment debtors. The court noted that the residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. (City of Ferguson, Missouri)

U.S. District Court
ALIEN

Mayorov v. *United States*, 84 F.Supp.3d 678 (N.D.Ill. 2015). A former state prisoner sued the United States, pursuant to the Federal Tort Claims Act (FTCA), claiming negligence and false imprisonment based on Immigration and Customs Enforcement (ICE) issuing an immigration detainer against him, despite his United States citizenship, causing him to spending 325 days in prison that he otherwise would not have served due to the Illinois Department of Corrections (IDOC) rules prohibiting a detainee from participating in a boot camp as an alternative to a custodial prison sentence. The parties moved for summary judgment. The district court held that fact issues as to whether the government breached a duty to reasonably investigate the prisoner's citizenship status prior to issuing an Immigration and Customs Enforcement (ICE) detainer. (Illinois Impact Incarceration Program)

U.S. Appeals Court
ALIEN
BOND

Rodriguez v. *Robbins*, 804 F.3d 1060 (9th Cir. 2015). A petitioner sought a writ of habeas corpus, on behalf of himself and a class of aliens detained during immigration proceedings for more than six months without a bond hearing, seeking injunctive and declaratory relief providing individualized bond hearings with the burden on the government, certification of the class, and appointment of class counsel. The district court denied the petition. The petitioner appealed. The appeals court reversed and remanded. On remand, the district court entered a preliminary injunction and the government appealed. The appeals court affirmed. The district court then granted summary judgment to the class and entered a permanent injunction, and the parties appealed. The appeals court affirmed in part and reversed in part. The court held that the aliens were entitled to automatic individualized bond hearings and determinations to justify their continued detention. The court ruled that the government had to prove by clear and convincing evidence that an alien was a flight risk or a danger to the community to justify denial of a bond at the hearing. (Immigration and Customs Enforcement, Los Angeles, California)

U.S. District Court
ALIEN
BOND

Rodriguez v. *Shanahan*, 84 F.Supp.3d 251 (S.D.N.Y. 2015). An alien who was subjected to mandatory detention pending removal proceedings, seven years after his criminal detention for narcotics possession, petitioned for a writ of habeas corpus, seeking an individualized bond hearing to challenge his ongoing detention by the Department of Homeland Security. The district court granted the petition, finding that the alien was entitled to a bond hearing pending removal proceedings and that his continued detention violated his Fifth Amendment due process rights. (Department of Homeland Security, New York)

SECTION 7: CIVIL RIGHTS

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.

Editors' Note: Most federal litigation against jails and prisons is brought under 42 U.S.C.A. Sec. 1983 ("Section 1983"). We have not included summaries of such cases in this chapter; readers should find such cases under the specific substantive topic that they address. We have elected to included cases that help to define the application of Section 1983 in this chapter, along with cases that address specific civil rights issues and concerns.

1941

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

U.S. v. Classic, 313 U.S. 299 (1941). "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the 'authority' of state law, is action taken 'under color of' state law." (Louisiana)

1944

U.S. Appeals Court
RIGHTS RETAINED

Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944). A prisoner retains all rights of an ordinary citizen except those expressly, or by necessity taken from him by law. (United States Public Health Service Hospital, Lexington, Kentucky)

1945

U.S. Supreme Court
COLOR OF LAW

Screws v. United States, 325 U.S. 91 (1945). Screws, Sheriff of Buker County, Georgia, a policeman and a deputy sheriff arrested Robert Hall at his home late one night on a warrant charging Hall with theft of a tire. Hall, a negro, was handcuffed and taken by car to the court house. Upon alighting from the car at the court house, Hall was beaten by the three men with fists and a blackjack for fifteen to thirty minutes. Hall was later removed to a hospital where he died.

Indictments were returned against the three men, one count charging a violation of Section 20 of the Criminal Code (predecessor of 42 U.S.C. Section 1983) and another charging a conspiracy to violate Section 20.

A district court jury returned a verdict of guilty, and a fine and imprisonment on each count was imposed. The Circuit Court of Appeals affirmed and Screws petitioned for a writ of certiorari. (Reversed, remanded for new trial.)

In discussing allegations that "under color of law" were designed to include only actions taken by officials pursuant to state law, the court stated:

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

1961

U.S. Supreme Court
42 U.S.C.A.
Section 1983
COLOR OF LAW

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

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

HELD: Allegation of facts constituting a deprivation under color of state authority of the fourth amendment guaranty against unreasonable searches and seizures, made applicable to the various states by the fourteenth amendment due process clause, satisfies to that extent the requirement of R.S. Section 1979 (42 U.S.C. Section 1983) 365 U.S. at 171.

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

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

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

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

> "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." 365 U.S. at 183.

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

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

HELD: "[W]e are of the opinion that Congress did not undertake to bring municipal corporations within the ambit of Section 1979 [42 U.S.C. Section 1983]." 365 U.S. at 187.

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

1966

U.S. Supreme Court
EQUAL PROTECTION

Baxtrom v. Herold, 383 U.S. 107 (1966). Baxtrom was denied equal protection of the laws at the expiration of his penal sentence without the jury review available to all other persons civilly committed in New York. Baxtrom was further denied equal protection of the laws by his civil commitment to an institution maintained by the Department of Correction beyond the expiration of his prison term without a judicial determination that he is dangerously mentally ill, such as that afforded to all so committed, except those like Baxtrom, nearing the end of a penal sentence. (Dannemora State Hospital, New York)

1967

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

Pierson v. Ray, 386 U.S. 547 (1967). Pierson, together with fourteen other members of a group of white and negro clergymen, was arrested by Jackson, Mississippi policemen while attempting to use a segregated interstate bus terminal waiting room in Jackson. The group was charged with breaking the peace in violation of a Mississippi statute. All fifteen were tried before a municipal police justice, found guilty, sentenced to four months in jail, and fined $200 each. After one of the group obtained a trial de novo on appeal, and a subsequent directed verdict, charges against the others were dropped. The group then initiated this action under 42 U.S.C. Section 1983 for deprivation of civil rights and at common law for false arrest and imprisonment.

The jury found for the police in the district court. On appeal, the Fifth Circuit held that the municipal police justice's acts were immune under both Section 1983 and

state common law; that the police had immunity under state common law for false arrest if they had probable cause to believe the statute they were enforcing was constitutional, but that by virtue of Monroe v. Pape, they had no such immunity under Section 1983 where the state statute was later declared unconstitutional.

HELD: The well established common-law principal that judges are immune from liability for damages for acts committed within their judicial jurisdiction was not abolished by Section 1983. 386 U.S. at 554.

HELD: "[T]he defense of good faith and probable cause....available to the [police] officers in the common-law action for false arrest and imprisonment, is also available to them in the action under Section 1983." 386 U.S. at 557. (Jackson, Mississippi)

1968

U.S. Supreme Court
GOOD FAITH
RACIAL
DISCRIMINATION

Lee v. Washington, 390 U.S. 333 (1968) (Per Curiam). Plaintiffs sought declaratory and injunctive relief against racial segregation in state, county, and city jails of Alabama. The U.S. District Court for the Middle District of Alabama held that to the extent that the statutes in question required segregation of races in prisons and jails, they were in violation of the fourteenth amendment, and established a schedule for desegregation. The state appealed directly to the U.S. Supreme Court. (Affirmed.) J.J. BLACK, HARLAN, & STEWART CONCURRING: [P]rison authorities have the right, acting in good faith and in particularized circumstances, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jails. We are unwilling to assume that state or local prison authorities might mistakenly regard such an explicit pronouncement as evincing any dilution of this Court's firm commitment to the fourteenth amendment's prohibition of racial discrimination. 390 U.S. at 334. (Alabama State, County, and City Jails)

U.S. District Court
RACIAL
DISCRIMINATION

Wilson v. Kelley, 294 F.Supp. 1005 (N.D. Ga. 1968), aff'd, 393 U.S. 266 (1968). Prisoners do not constitute a proper class for litigating racial discrimination in staffing. 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. (Board of Corrections, Georgia)

1970

U.S. District Court
SLAVERY
RACIAL
DISCRIMINATION

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.

To the extent that unconstitutional racial discrimination was being practiced in state prison system, such discrimination was to be eliminated. The fourteenth amendment prohibits racial discrimination within prisons, and the prohibition extends to racial segregation of inmates.

Confinement in an otherwise unexceptional penal institution is not unconstitutional simply because institution does not operate a school, or provide vocational training or other rehabilitative facilities and services, but the absence of an affirmative program of training and rehabilitation may have constitutional significance where in the absence of such program conditions and practices exist which actually militate against reform and rehabilitation.

The term "cruel and unusual punishment" cannot be defined with specificity. It is flexible and tends to broaden as society tends to pay more regard to human decency and dignity and becomes, or likes to think that it becomes, more humane. Generally speaking, punishment that amounts to torture, when it is grossly excessive in proportion to the offense for which it is imposed, or that is inherently unfair, or that is unnecessarily degrading, or that is shocking or disgusting to people of reasonable sensitivity is a "cruel and unusual punishment". Punishment that is not inherently cruel and unusual may become so by reason of the manner in which it is inflicted.

Elimination of a trusty system under which trusties had unsupervised power over other inmates was essential to the establishment of the prison system meeting constitutional standards. (Arkansas Prison System)

1972

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

Cruz v.Beto, 405 U.S. 319 (1972). Claiming a cause of action under 42 U.S.C. Section 1983, Cruz, an alleged Buddhist, incarcerated in a Texas prison, complained that he was not allowed to use the prison chapel, that he was prohibited from corresponding with his religious advisor, and that he was placed in solitary confinement for sharing his religious materials with other inmates.

The U.S. District Court dismissed the complaint on the grounds that it was in an area that should be left "to the sound discretion of prison administration." The Fifth Circuit Court of Appeals affirmed, and the U.S. Supreme Court granted certiorari.

HELD: "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 405 U.S. at 322 Citing Conley v. Gibson, 355 U.S. at 45-46. (Texas Department of Corrections, Ellis Unit)

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

Haines v. Kerner, 404 U.S. 519 (1972) (Per Curiam), cert. denied, 405 U.S. 948 (1972). Haines, an inmate at the Illinois Penitentiary commenced this 42 U.S.C. Section 1983, 28 U.S.C. Section 1343 (3) action against the governor, state officials, and prison officials. Haines' pro se complaint included allegations of physical injuries suffered while in disciplinary confinement and denial of due process in the process leading to that confinement.

The U.S. District Court for the eastern district of Illinois dismissed the complaint for failure to state a claim upon which relief could be granted, suggesting that only in exceptional circumstances should courts venture into the operation of the state penitentiary and concluding Haines failed to show a deprivation of federally protected rights. The Seventh Circuit Court of Appeals affirmed, and Haines petitioned the U.S. Supreme Court for a writ of certiorari, contending the district court erred in dismissing his pro se complaint without allowing him to present evidence. (Reversed and Remanded.)

HELD: "Whatever may be the limits in the scope of inquiry of writs into the internal administration of prisons, allegations such as these asserted by [Haines], however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence." 404 U.S. at 520. (Illinois 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. Supreme Court
42 U.S.C.A.
Section 1983
USE OF FORCE

Moore v. County of Alameda, 411 U.S. 693 (1973), reh'g denied, 412 U.S. 963 (1973). Moore and Ranelle filed separate actions in the district court for the northern district of California seeking to recover actual and punitive damages for injuries allegedly suffered by them as a result of the wrongful discharge of a shotgun by a deputy sheriff in quieting a civil disturbance. Four deputy sheriffs, the sheriff, and the county were named as defendants. Federal causes of action under the Civil Rights Act of 1871, 42 U.S.C. Sections 1983 and 1988 were alleged against the county as well as pendent state claims under the state's tort claims statute. Both federal and state cases of actions were grounded on the theory that the county was vicariously liable under state law for the deputy sheriff's acts. Federal jurisdiction was alleged under 28 U.S.C. Section 1343 and on diversity of citizenship grounds.

The county moved to dismiss each action contending that first, it was not a suable "person" under Monroe v. Pape, 365 U.S. 167 (1961); second, absent a claim against it existing on an independent basis of federal jurisdiction, application of the pendent jurisdiction doctrine was inappropriate as to the state tort claims; and third, the county was not a "citizen" for purposes of diversity of citizenship jurisdiction. Motions to dismiss were granted by the district court, the Ninth Circuit Court of Appeals affirmed, and certiorari from the Supreme Court was sought.

ISSUE AND HOLDING: Whether a federal course of action lies against a municipality under 42 U.S.C. Sections 1983 & 1988 for the actions of its officers which violate an individual's federal civil rights where the municipality is subject to such liability under state law. The legislative history of Section 1988 clearly indicates that Congress did not intend to create an independent federal cause of action for the violation of federal civil rights. To apply Section 1983 by imposing vicarious liability upon the county would conflict with the holding of Monroe v. Pape, 365 U.S. 167 (1961) and Congress' intent to exclude a state's political subdivision from Section 1983 civil liability. 411 U.S. at 702, 706, 710.

HELD: "We find nothing in the legislative history discussed in Monroe [v. Pape, 365 U.S. 167] or in the language actually used by Congress to suggest that the generic word "person" in Section 1983 was intended to have a bifurcated application to municipal

corporations depending on the nature of the relief sought against them...[Municipalities] are outside of its ambit for purposes of equitable relief as well as damages." 412 U.S. at 513.

Justice Douglas capsulized the rationale of the Monroe V. Pape decision (which he authored with regard to municipal immunity under Section 1983):

> The holding in Monroe v. Pape that municipalities are not subject to suits for damages under Section 1983 was based largely on Congress' rejection of the Sherman Amendment which would have provided compensation for individuals from the county, city, or parish for any damages caused by riots, etc. Two theories were expressed in the debates for rejecting the amendment. The first was the notion that civil liability for damages might destroy or paralyze local governments. Also it was thought unjust that local governments (and indirectly the citizenry at large) should be subject to damages where they bore no responsibility.... There was another strain, however. Congressman Brooks viewed the amendment as raising the old struggle between the Federalists and the Democrats. 412 U.S. at 417-518.

(County of Alameda Sheriff's Department)

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

Page v. Sharpe, 487 F.2d 567 (1st Cir. 1973). Denial of medical care to inmate is actionable under Section 1983 only if the complaint alleges 1) intent to harm inmate, or 2) an injury obviously requiring medical attention. Mere negligence, unless it shocks the conscience, will not suffice. (Cumberland County Jail, Maine)

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

Preiser v. Rodriguez, 411 U.S. 475 (1973). Rodriguez and two other New York state prisoners bring 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 Department of Corrections)

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
RACIAL
DISCRIMINATION

Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Segregation of inmates by race is unconstitutional. (Mecklenburg County Jail, North Carolina)

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

Wolff v. McDonnell, 418 U.S. 539 (1974). McDonnell, an inmate in a Nebraska state prison, brought this 42 U.S.C. Section 1983 action on behalf of himself and other inmates, alleging that disciplinary proceedings did not comply with the due process clause of the fourteenth amendment; that the inmate legal assistance program did not meet constitutional standards, and that regulations governing the inspection of mail to and from attorneys were unconstitutionally restrictive. Wolff, warden of the prison was named as the defendant. McDonnell sought injunctive relief and damages.

The U.S. District Court rejected the procedural due process claim; held the prison's policy of inspecting all incoming and outgoing mail to and from attorneys violated prisoners' access to the courts; and that restrictions on inmate legal assistance were not in violation of the Constitution.

The Eighth Circuit Court of Appeals reversed with respect to the due process claim, holding disciplinary proceedings in prisons must comply with the procedural

requirements of parole revocation and probation revocation proceedings. On the basis of Preiser v. Rodriguez, 422 U.S. 475 (1973) the court held good-time credits could not be restored on this action but ordered that any disciplinary actions taken as a result of proceedings that failed to comply with procedures as outlined by the court be expunged from prison records. The court affirmed the district court's decision on the attorney-inmate correspondence issue but ordered further proceedings to determine if the state was complying with the directives of Johnson v. Avery, 393 U.S. 483 (1969), in providing legal assistance to inmates. From this decision Wolff petitioned for a writ of certiorari. (Nebraska State Prison)

1975

U.S. District Court
REMEDIES

Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). When a federal court finds numerous constitutional violations in the operation of a detention system, it has the duty to fashion effective relief and is allowed wide discretion. Federal courts hearing civil rights action also have, in the exercise of pendent jurisdiction, power to order defendants to comply with state law. (Harris County Jail, Texas)

U.S. Appeals Court
HOMOSEXUALS

McCray v. Sullivan, 509 F.2d. 1332 (5th Cir. 1975). Homosexuals segregated as a suspect class is questionable. (Alabama State Penitentiary)

1976

U.S. Supreme Court
42 U.S.C.A.
SECTION 1983
DISCIPLINE

Baxter v. Palmigiano, Enomoto v. Clutchette, 425 U.S. 308 (1976). Palmigiano and Clutchette, inmates in Rhode Island and California prisons respectively, alleged in separate 42 U.S.C. Section 1983 actions that they had been denied their rights to due process and equal protection of the laws under the fourteenth amendment. Both inmates claimed that they were entitled to the aid of legal counsel during disciplinary proceedings. Additionally, Palmigiano claimed he had a right to cross-examine witnesses, and Clutchette claimed that his decision to remain silent during disciplinary proceedings should not have been given evidentiary significance.

The U.S. District Court granted Clutchette relief, a decision affirmed by the Ninth Circuit Court of Appeals. Palmigiano was denied relief in U.S. District Court, but the First Circuit Court of Appeals reversed. The U.S. Supreme Court granted certiorari and heard the two cases together. Decisions were then reversed.

HELD: "We see no reason to alter our conclusion so recently made in Wolff [v. McDonnell] that inmates do not 'have a right to either retained or appointed counsel in disciplinary hearings'." 425 U.S. at 315. (Rhode Island and California prisons)

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

Estelle v. Gamble, 429 U.S. 97 (1976), cert. denied, 429 U.S. 1066 (1976).
Gamble, a Texas state inmate, brought this 42 U.S.C. Section 1983 action against Estelle, Texas Corrections Director, the state corrections department medical director, and two correctional officials, claiming inadequate treatment of a back injury sustained while engaged in prison work constituted cruel and unusual punishment in violation of the eighth amendment. The U.S. District Court dismissed the complaint for failure to state a cause of action upon which relief could be granted. The Fifth Circuit Court of Appeals ruled the complaint must be reinstated, and the state officials petitioned for a writ of certiorari from the U.S. Supreme Court. (Reversed and Remanded.)
HELD: "[D]eliberate indifference to serious needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the eighth amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under Section 1983." 429 U.S. at 104-105. (Texas Department of Corrections)

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

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)

U.S. Supreme Court
42 U.S.C.A.
Section 1983
DUE PROCESS
TRANSFERS

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. 427 U.S. at 224.

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. 427 U.S. at 225.

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
42 U.S.C.A.
Section 1983
TRANSFER

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.) (Attica Correctional Facility, New York)

1977

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

Arroyo v. Schaefer, 548 F.2d 47 (2d Cir. 1977). Respondeat superior does not apply to Section 1983 actions. (Manhattan House of Detention)

U.S. Supreme Court
LAW LIBRARY
ACCESS TO COURT

Bounds v. Smith, 430 U.S. 817 (1977). In this 42 U.S.C. Section 1983 action, inmates incarcerated in the North Carolina correctional facilities allege they were denied access to the courts in violation of their fourteenth amendment rights by the state's failure to provide legal research facilities.

After an acceptable plan was developed by the state to provide library facilities, the U.S. district court ruled that the state was not constitutionally required to provide

legal assistance as well as libraries. The Fourth Circuit Court of Appeals affirmed all aspects of the district court's decision except for its finding that the state's plan did not provide equal access to the research facilities for women. From an order eliminating this discrimination the state sought review in the U.S. Supreme Court which was affirmed. (North Carolina State System)

U.S. Supreme Court
SEX DISCRIMINATION

Dothard v. Rawlinson, 433 U.S. 321 (1977). After her application for employment as an Alabama prison guard was rejected because she failed to meet the minimum 120 pound weight requirement of a state statute (also establishing a five' two" minimum) Rawlinson, a college graduate who majored in correctional psychology, filed a charge with the Equal Employment Opportunity Commission, and ultimately brought a class action against correctional officials. Rawlinson challenged the requirements as violative of Title VII of the 1964 Civil Rights Act.

A three judge district court ruled in favor of Rawlinson on the basis of national statistics showing that the state's statute would effectively exclude over forty percent of the female population, but only one percent of the male population. The court found Rawlinson had made a prima facie case of unlawful sex discrimination, which the officials failed to rebut. The district court also rejected the officials' defense that the statute represented a bona-fide occupational qualification allowed under Title VII. Dothard appealed, and the Court affirmed in part and reversed in part.

HELD: "[T]he district court was not in error in holding that Title VII of the Civil Rights Act of 1964, as amended, prohibits application of the statutory height and weight requirements [excluding over forty percent of all women opposed to only one percent of all men] to Rawlinson and the class she represents." 433 U.S. at 322. (Alabama Board of Correction)

U.S. Appeals Court
REMEDIES

Smith v. Sullivan, 553 F.2d 373 (5th Cir. 1977). In a jail case as in a school desegregation case, once a constitutional violation is shown, the scope of a court's equitable powers is broad and flexible. (El Paso County Jail, Texas)

1978

U.S. District Court
BRUTALITY

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. Supreme Court
SEX DISCRIMINATION
42 U.S.C.A. SECTION 1983

Monell v. Department of Social Services of the City of New York, 98 S.Ct. 2018 (1978). Female employees of the Department of Social Services and the Board of Education of New York City brought this class action against the department and its 1983 commissioner, the board and its chancellor, the City of New York and its mayor under 42 U.S.C. Section 1983. In each instance, the individual defendants were sued solely in their official capacity. The basis of the complaint was that the board and the department had as a matter of official policy compelled pregnant employees to take unpaid leaves of absence before such leaves were medically required.

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

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

HELD: [A]lthough the touchstone of the Section 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other Section 1983 'person' by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels. 98 S.Ct. at 2036.

HELD: [T]he language of Section 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities

to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable solely because it employs a tort-feasor, or in other words, a municipality cannot be held under Section 1983 on a respondeat superior theory. 98 S.Ct. at 2036.

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

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

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

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

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

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

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

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

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

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

The U.S. District Court granted summary judgment for the prison officials, the Ninth Circuit Court of Appeals reversed, and the officials petitioned for a writ of certiorari and the Supreme Court reversed the lower court decision.

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

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

1979

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

Baker v. McCollan, 99 S.Ct. 2689 (1979). McCollan's brother duplicated McCollan's driver's license, substituting his own picture for McCollan's. The brother was arrested on narcotics charges and used the license as identification. Initially released on bond, an arrest warrant was later issued. Pursuant to that warrant, McCollan was arrested by the Sheriff's Department. Despite his protest, McCollan was detained for several days before the error was discovered, and he was released. McCollan brought this 42 U.S.C. Section 1983 action against the sheriff and his surety, claiming his detention in

jail deprived him of liberty without due process of law. The District Court for the Northern District of Texas directed verdict for the sheriff, and the Fifth Circuit Court of Appeals reversed and remanded. The Supreme Court granted certiorari.

HELD: McCollan failed to satisfy the threshold requirement of Section 1983, that the plaintiff be deprived of a right secured by the constitution and the laws and had no recognizable Section 1983 claim. (99 S.Ct. at 2692.) (Potter County Jail, Texas)

U.S. Supreme Court
CONDITIONS
PRETRIAL
DETAINEES
REGULATIONS

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. (Federal Metropolitan Correctional Center, New York City)

U.S. Appeals Court
RACIAL
DISCRIMINATION

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.

DISCRIMINATION. The appellate court upheld the lower court's ruling that the cells at the Jackson County Jail were not segregated. Two bull pens at the jail, however, were ruled to be unconstitutionally segregated. In response to the plaintiff's interrogatories, the jail officials had produced documents showing that the large bull pen was "white" and the small bull pen was "colored." The jail officials argued that they were not responsible for the segregation because each new inmate was given the freedom to choose which bullpen he wished to occupy. The court held that this was not enough, stating: "In the inherently coercive setting of a jail, it is evident to us that the withdrawal of decision making by the public officials for only part of the jail (here, the bull pens) amounts to impermissible racial segregation of prisoners. (Jackson County Jail, Pascagoula, Mississippi)

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. Supreme Court
EQUAL PROTECTION
SEX
DISCRIMINATION
42 U.S.C.A.
SECTION 1983

Maher v. Gagne, 448 U.S. 122 (1980). Gagne brought this 42 U.S.C. Section 1983 in a federal court alleging that the state of Connecticut's AFDC regulations denied her credit for substantial portions of her actual work related expenses resulting in a reduction in the level of her benefits. Gagne contended this violated the Social Security Act and the equal protection and due process clauses of the fourteenth amendment. The district court entered a consent decree providing for a substantial increase in allowances for work related expenses. Gagne was awarded attorney's fees under 42 U.S.C. Section 1988 on the basis that Gagne was entitled to the fees because in addition to her statutory claim, she alleged constitutional claims that were sufficiently substantial to support federal jurisdiction. The Second Circuit Court of Appeals affirmed, and state officials sought certiorari from the U.S. Supreme Court. The Supreme Court affirmed the circuit court decision. (State of Connecticut)

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

Maine v. Thiboutot, 100 S.Ct. 2502 (1980). Following the exhaustion of state administrative remedies, Thiboutot seeks judicial review in a Maine Superior Court of the State of Maine's and the Commissioner of Human Services' denial of welfare benefits that Thiboutot contended his family was entitled to under the Federal Social Security Act, 42 U.S.C. Section 602 (2)(7). Thiboutot sought relief for himself and others similarly situated, under 42 U.S.C. Section 1983.

The superior court's judgment enjoined the state from enforcing the challenged rule, ordered the state to adopt new regulations, and to pay the correct amounts retroactively to Thiboutot, and prospectively to new class members. The court denied Thiboutot's motion for attorneys' fees. The Maine Supreme Court concluded while Thiboutot was not entitled to attorneys' fees under state law, he was eligible under 42 U.S.C. Section 1988, the Civil Rights Attorneys' Fee Award Act of 1976. State officials then sought certiorari from the U.S. Supreme Court. (Affirmed.)

ISSUE: Whether 42 U.S.C. Section 1983 encompasses claims based on purely statutory violations of federal law. HELD: Given that Congress attached no modifiers to the phrase, the plain language of the statute undoubtedly embraces [Thiboutot's] claim that [the state] violated the Social Security Act. Even were the language ambiguous, however, any doubt as to its meaning has been resolved by our several cases suggesting, explicitly or implicitly, that the Section 1983 remedy broadly encompasses violations of federal statutory as well as constitutional law. 48 LW at 4860. (Maine Department of Human Services)

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

Martinez v. State of California, 100 S.Ct. 553 (1980), reh'g denied, 100 S.Ct. 1285. Martinez' 15 year old daughter was murdered by a parolee five months after he was released from prison, despite a known history as a sex offender. Martinez brought this action in a California state court under state law and 42 U.S.C. Section 1983 claiming state officials in releasing the parolee subjected his daughter to a deprivation of life without due process of law. A demurrer to the complaint was sustained, the California Court of Appeals affirmed on the basis of a statute granting parole officials absolute immunity from liability for any injury resulting from parole-release decisions. Appeal was made directly to the U.S. Supreme Court. (Affirmed.) HELD: "[A]t least under the particular circumstances of this parole decision...[the death] is too remote a consequence of the parole officers' action to hold them responsible without federal rights law." 100 S.Ct. 559. (State of California)

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

Owen v. City of Independence, Mo., 100 S.Ct. 1398 (1980), reh'g denied, 100 S.Ct. 2979. Following an investigation of alleged mismanagement of the police department's property room, and other irregularities in the department, the Independence, Missouri, City Council moved that reports of the investigation be turned over to the news media and to the prosecutor for presentation to a grand jury. Additionally, the city manager was instructed to take appropriate action against persons involved. Accordingly, under powers granted him by the city's charter, the city manager dismissed Owen, the chief of police. Owen was given no reason for his dismissal, only written notice that his employment as chief of police was terminated.

Owen brought suit in the U.S. District Court for the Western District of Missouri under 42 U.S.C. Section 1983 against the city, the city manager, and the City Council in their official capacities. Alleging that his dismissal without notice of reasons and without a hearing violated his substantive and procedural due process rights, Owen

sought declaratory and injunctive relief. The district court entered judgment for the defendants. The Eighth Circuit Court of Appeals affirmed, holding that although the defendants had violated Owen's fourteenth amendment rights, all the defendants were entitled to qualified immunity from liability based on the good faith of the city officials. Owen petitioned the Supreme Court for a writ of certiorari, and the Court reversed the lower court decision. HELD: "We hold...that the municipality may not assert the good faith of the officers or agents as a defense to liability under Section 1983." 100 S.Ct. at 1409. (City of Independence, Missouri)

1981

U.S. District Court
CONDITIONS
RACIAL
DISCRIMINATION
OVERCROWDING

Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981). Prisoners being held in the county jail brought an action challenging conditions of their confinement and seeking damages for violation of their civil rights. The United States District Court for the Southern District of Mississippi entered judgment generally favorable to county officials, and the prisoners appealed. On rehearing, the court of appeals held that in determining whether conditions of confinement are unconstitutional under the eighth amendment or fourteenth amendment, the court does not assay separately each of the institutional practices but looks to the totality of conditions. Further, the court is limited to enforcing constitutional standards rather than assuming superintendence of jail administration. On rehearing, 594 F.2d 997, the court of appeals, Alvin B. Rubin, Circuit Judge, held that racial segregation of prisoners, overcrowding, unsanitary conditions, inadequate diet, failure to control or segregate violent prisoners, confinement of pretrial detainees, administration of discipline, and censorship of mail constituted violations of prisoners' constitutional rights. Where the conditions of the institution have improved but there is nothing in the record which would suggest any basis for an assurance that the conditions would not change, injunctive relief is warranted. An injunction prohibiting racial segregation, overcrowding and discipline, except in accordance with the newly prescribed rules, was entered. (Jackson County Jail, Pascagoula, Mississippi)

U.S. Supreme Court
42 U.S.C.A.
Section 1983
COLOR OF LAW
TORT CLAIMS

Parratt v. Taylor, 451 U.S. 527 (1981). The plaintiff, an inmate of a Nebraska prison, ordered by mail certain hobby materials. After being delivered to the prison, the packages containing the materials were lost when the normal procedures for receipt of mail packages were not followed. The inmate brought an action in federal district court under 42 U.S.C. Section 1983 against prison officials to recover the value of the hobby materials, claiming that they had negligently lost the materials and thereby deprived the inmate of property without due process of law in violation of the fourteenth amendment. The district court entered summary judgment for the inmate, holding that negligent actions by state officials can be a basis for an action under Section 1983, that officials were not immune from liability, and that the deprivation of the hobby materials implicated due process rights. The court of appeals affirmed. The United States Supreme Court disagreed, **holding** that the inmate had not stated a claim for relief under 42 U.S.C. Section 1983. Pp. 531-544.

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

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

1982

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

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

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

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

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

Patsy v. Board of Regents of the State of Florida, 102 S.Ct. 2557 (1982). Section 1983 actions may be brought before state administrative remedies are exhausted. The United States Supreme Court reaffirmed its position that exhaustion of administrative remedies is not necessary to institute a Section 1983 cause of action. In a reverse discrimination case, the court of appeals had held that under the circumstances the plaintiff must first pursue and exhaust state administrative remedies before initiating a federal cause of action under Section 1983. The Supreme Court reversed the lower court ruling, relying on the intent of Congress for part of its reasoning:

> ...[C]ongress has taken the approach of carving out specific exceptions to the general rule that federal courts cannot require exhaustion under Section 1983. It is not our province to alter the balance struck by Congress in establishing the procedural framework for bringing actions under Section 1983.

This decision implies that exhaustion of administrative remedies can never be made a prerequisite to a civil rights cause of action unless specifically authorized by federal statute. The court noted that until Congress clarifies its intent, the court must rely on its interpretation of previous congressional acts. (Board of Regents, Florida)

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

Sturts v. City of Philadelphia, 529 F.Supp. 434 (E.D. Penn. 1982). It has been a long standing requirement that a civil rights complaint contains a modicum of specificity, identifying the particular conduct of the defendant that has alleged to have harmed the plaintiff. Vague and conclusory allegations, such as "intentionally, willfully and recklessly," are, without more evidence, insufficient to make out a complaint under 42 U.S.C.A. Section 1983. A complaint that the City of Philadelphia acted "recklessly, carelessly and negligently" by failing to provide adequate protection for prison inmates and by failing to segregate an allegedly dangerous inmate because of his alleged violent and irrational behavior was insufficient. (Holmesburg Correctional Institute, Pennsylvania)

1983

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

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

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

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

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

1984

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

Tuttle v. City of Oklahoma City, 728 F.2d 456 (10th Cir. 1984), reh'g denied, 106 S.Ct. 16 (1983). **Reversed** by City of Oklahoma City v. Tuttle, 105 S.Ct. 2427 (1985) - see summary later in this section. 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
USE OF FORCE
LIABILITY
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)

U.S. Appeals Court
RACIAL
DISCRIMINATION

Jones v. Hutto, 763 F.2d 979 (8th Cir. 1985). Court finds prison officials discriminated against black employees. Use of subjective criteria for determining who will be promoted resulted in discrimination against black employees, according to the Eighth Circuit Court of Appeals. Considering personality traits (listening and learning skills, maturity, trust, dependability), prison officials placed proportionally more white employees in higher level jobs. Although not all blacks were discriminated against, the defendants were held liable for the discrimination which did occur. (Arkansas Department of Corrections)

U.S. District Court
RACIAL
DISCRIMINATION

Jones v. Mississippi Dept. of Corrections, 615 F.Supp. 456 (D.C. Miss. 1985). Two black prison guards brought a civil rights action claiming racial discrimination in the employment promotion practices. The district court held that: (1) the first guard's allegations were insufficient to establish a prima facie case of disparate treatment; (2) evidence with respect to the second guard was sufficient to establish a prima facie case of disparate impact under Title VII; and (3) evidence was insufficient to establish that an oral examination process for promotion of prison guards was job related for purposes of rebutting a prima facie case.

In a disparate treatment case involving allegations of discrimination in promotion practices, Title VII plaintiff must show the following: that he belongs to a group protected by the statute; he was qualified for the position to which he sought promotion; he was not promoted; and after his nonpromotion, the employer continued to seek applicants not in the plaintiff's protected class or promoted those having comparable or lesser qualifications, not in the plaintiff's protected class.

The employer does not bear the burden of persuading the court that he was actually motivated by proffered reasons for an allegedly discriminatory employment decision. The employer need only raise genuine issue of fact as to whether there was illegal discrimination involved in the plaintiff's discharge. (Department of Corrections, Mississippi)

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

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

Prevailing defendants generally are entitled to costs, but are entitled to fees only when the suit was vexatious, frivolous or brought to harass or embarrass the defendant.

Personal-capacity civil rights suits seek to impose personal liability on a government official for actions he takes under color of state law. In contrast, official-capacity suits generally represent only another way of pleading an action against the entity of which the officer is an agent. (State Police, Kentucky)

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

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

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

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

U.S. District Court
RACIAL
DISCRIMINATION

Snell v. Suffolk County, 611 F.Supp. 521 (D.C. N.Y. 1985). Court finds that black and hispanic workers were subjected to racial harassment by co-workers. Sixteen correctional officers who were either Black or Hispanic sued the sheriff and the county for allegedly failing to stop verbal abuse and racial harassment from co-workers. The court found for the plaintiffs on this aspect of the suit, ordering county officials to remedy such abuses. The county was not found liable for depriving the workers of job assignment and pay because of their race. (Suffolk County, New York)

1986

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

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

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

U.S. Supreme Court
LIABILITY
NEGLIGENCE

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

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

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

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

U.S. Supreme Court
LIABILITY
FALSE ARREST

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)

U.S Supreme Court
LIABILITY

Pembaur v. City of Cincinnati, 106 S.Ct. 1292 (1986). Municipal liability under 42 U.S.C.A. Section 1983 may be imposed for a single decision by municipal policymakers under appropriate circumstances. A physician who was indicted and eventually acquitted of fraud charges was convicted for obstructing police. He filed suit alleging violation of his rights under the fourth and fourteenth amendments. Sheriffs' deputies had attempted to serve capiases on two of the physician's employees at his clinic and were refused entry. After receiving instructions from the county prosecutor to "go in and get" the employees, the deputies tried to force the door and then chopped the door down with an axe. The physician's suit was dismissed by the federal district court on the grounds that the deputies were not acting pursuant to the kind of "official policy" that is a requisite for liability under Monell v. New York City Dept. of Social Services, 98 S.Ct 2018. The appeals court affirmed, holding that the plaintiff failed to prove the existence of a policy because he had shown nothing more than that on "this one occasion" the prosecutor and the sheriff decided to force entry.

The Supreme Court reversed the lower court decisions. The majority held that the "official policy" requirement of Monell was intended to distinguish the acts of the municipality from the acts of its employees. In this case, the municipality should be held liable for the actions of its employees because it officially ordered and sanctioned them. "With this understanding, it is plain that municipal liability may be imposed for a single decision of municipal policymakers under appropriate circumstances. If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether the action is to be taken only once or to be taken repeatedly." (City of Cincinnati, Hamilton County, Ohio)

U.S. Appeals Court
RACIAL
DISCRIMINATION

Snell v. Suffolk County, 782 F.2d 1094 (2nd Cir. 1986). Federal courts find correctional employees subjected to racial harassment, award damages, and order administrative actions. Sixteen black and hispanic correctional officers filed suit against the county sheriff under Title VII, alleging racial discrimination in employment. A federal district court judge found the county liable for failure to correct a racially hostile work atmosphere. The district court jury found for each of three plaintiffs who had been publicly humiliated, awarding a total of $11,500.

The district court judge concluded that the employees had been "subjected to vicious, frequent and reprehensible instances of racial harassment" that deprived them of their Title VII rights to a working environment which is free from racial harassment. The judge ordered the warden to appear before all correction officers and "declare that the County will not tolerate any correction officer's action discriminating against another correction officer because of his or her minority status."

The judge also instructed the warden to forbid the use of racial epithets, the posting or distribution of derogatory bulletins, mimicking officers in stereotypical fashion, and the use of racial, ethnic or religious slurs and humor. The district court ordered the warden to tell employees that such behavior would result in prompt and severe discipline. The appeals court affirmed. (Suffolk County Sheriff Department/Jail, Massachusetts)

1987

U.S. Appeals Court
EQUAL PROTECTION

Davis v. Bowen, 825 F.2d 799 (4th Cir. 1987), cert. denied, 108 S.Ct. 1036. A felon brought action challenging suspension of his social security retirement benefits. The federal district court granted the motion of the Secretary of Health and Human Services for dismissal. The felon appealed. The appeals court held that the blanket suspension of social security retirement benefits for incarcerated felons did not violate the felon's due process or equal protection rights. According to the court, the suspension was consistent with discretion granted to the Secretary in the Social Security Act and rationally promoted the legitimate underlying congressional policy goal of conserving scarce social security resources where basic economic needs of incarcerated felons are provided from other public sources.

U.S. District Court
PAROLE
RACIAL DISCRIMINATION

Davis El v. O'Leary, 668 F.Supp. 1189 (N.D.Ill. 1987). A prisoner brought a civil rights lawsuit against the Prisoner Review Board and others, alleging that they discriminated against African-American prisoners by granting parole requests to European-American prisoners at a faster rate than it did the African-American prisoners. The federal district court found members of the Parole Board to be absolutely immune from Federal Civil Rights liability for parole decisions and the court dismissed the portion of the complaint that implicated the Parole Board. However, the court stated that if the inmates' allegations were proven, it would be proper to issue an injunction against the board's discriminating against parole applicants because of their race. The court denied the prisoner's request for a mandatory injunction ordering the Prisoner Review Board to release him because of a rule enunciated by the U.S. Court of Appeals for the Seventh Circuit in Crump v. Lane, 807 F.2nd 1397 (7th Cir. 1986) that a writ of habeas corpus is the sole federal remedy for state prisoners seeking release from prison. (Illinois Prisoner Review Board)

U.S. Appeals Court
HOMOSEXUALS

Espinoza v. Wilson, 814 F.2d 1093 (6th Cir. 1987). Because it threatened institutional security, a federal appeals court affirmed a district court's ruling and held that inmates at a medium security prison were not entitled to receive publications advocating a homosexual lifestyle. According to the court, unless they are of a medical or religious nature, publications advocating homosexuality are banned from prison for reasons of security. The court agreed with the warden's testimony that publications advocating a homosexual lifestyle angered fellow inmates, but it rejected the warden's second reasoning that if the plaintiff inmates received these publications, other inmates would know that they were homosexuals and would cause them harm, because those inmates were already admitted homosexuals within the prison, the court explained. Under the prison rules, not all homosexual oriented publications were withheld from the inmates; only materials that approved of homosexuality were banned. (Luther Luckett Correctional Complex)

U.S. Appeals Court
RACIAL DISCRIMINATION

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. Appeals Court
HANDICAP
MEDICAL CARE

Lafaut v. Smith, 834 F.2d 389 (4th Cir. 1987). A paraplegic inmate was placed in a private room that had no handicap facilities shortly after he was admitted to a federal correctional facility. Because of his physical condition and the absence of a railing for support, the inmate would slip down into the toilet bowl water and also risk falling off the toilet. The appellant was finally transferred to a room that contained adequate toilet facilities more than three months after his arrival and after he had contracted a kidney infection. Because of inaccessible toilets at his work assignments, he suffered

another infection which, in addition to being placed in a disciplinary segregation without the use of a catheter for several days nor adequate access to the toilet facilities resulted in hardships for the inmate which included falling off a toilet in the segregation unit and, as a result, breaking his right leg. Despite repeated requests for adequate rehabilitation therapy, and the reports of an orthopedic specialist that he was in need of such therapy, none was provided. A federal appeals court found that the Eighth Amendment was violated because these conditions constituted "deliberate indifference." (Federal Correctional Institution, Butner, North Carolina)

U.S. Appeals Court
RACIAL DISCRIMINATION

Moore v. Clarke, 821 F.2d 518 (8th Cir. 1987). A federal appeals court ruled that a Nebraska inmate's suit that challenged the disbanding of a prison's boxing program as being the result of racial discrimination sufficiently alleged a civil rights deprivation claim. The complaint alleged that the defendants discontinued the boxing program because of racial animus, that most of the participants in the program had been black, and that the defendants stated no reason for having taken their action. (Nebraska State Penitentiary)

U.S. District Court
EQUAL PROTECTION

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. Appeals Court
EQUAL PROTECTION
RACIAL DISCRIMINATION

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)

U.S. District Court
EQUAL PROTECTION

Shaw v. Neb. Dept. of Correctional Services, 666 F.Supp. 1330 (D.Neb. 1987). A female employee of the Nebraska Department of Correctional Services brought action against the Department and two of its administrators for violation of her Fourteenth Amendment equal protection rights. The District Court held that: (1) the female employee established she was discriminated against on the basis of sex when she was denied a promotion in violation of both Title VII and equal protection clause for the Fourteenth Amendment, and (2) the employee was entitled to award of back pay, front pay, general compensatory damages, interest and taxable court costs. (Lincoln Post Care Center)

1988

U.S. District Court
RACIAL DISCRIMINATION
EQUAL PROTECTION

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
EQUAL PROTECTION

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
PAROLE
RACIAL
DISCRIMINATION

Fuller v. Georgia State Bd. of Pardons and Paroles, 851 F.2d 1307 (11th Cir. 1988). A black inmate brought a civil rights action against the state Board of Pardon and Parole, alleging that he was denied fair opportunity for parole due to racial discrimination. The federal district court granted the Board's motion for summary judgment, and the inmate appealed. The Court of Appeals held that: (1) the state Parole Board was protected from imposition of civil damages by sovereign immunity pursuant to the Eleventh Amendment; and (2) statistical evidence that, historically, white rapists were granted parole more often than black rapists was insufficient to establish prima facie case of racial discrimination, absent evidence that black rapist challenging Parole Board's policies was similarly situated with any inmates who were granted parole. According to the court, individual members of state Parole Board are entitled to absolute quasi-judicial immunity from suit for damages. (Georgia Board of Pardons and Paroles)

State Court
RIGHTS
RETAINED

Martin v. Haggerty, 548 A.2d 371 (Pa.Cmwlth. 1988). Inmates confined in Pennsylvania correctional institutions filed a class action claiming that they have been improperly denied the right to vote while incarcerated. They complained that they were denied the use of absentee ballots, denied the right to register, and that no voting facilities were provided at correctional institutions. They also claimed that they should be transported to their regular places of residence to register and vote. The argument that these conditions violated the state constitution was rejected the state court. Although the state constitution sets forth qualifications of voters, stating that every citizen who meets certain age and residency requirements is entitled to vote, it also empowers the legislature to enact laws regulating the registration of voters. It has chosen to bar persons confined in penal institutions from the use of absentee ballots. It is noted by the court that such provisions, at least in regards to convicted felons, have been held not to violate the U.S. Constitution. It is found that these provisions also did not violate the state constitution and that prisoners had no right to be transported to their regular polling places to register and to vote. The discussion by the court was limited to the right of convicted felons, since that was the issue addressed by the plaintiffs. (Pennsylvania Correctional Institutions)

1989

U.S. District Court
AIDS
CONDITIONS

Bird v. Figel, 725 F.Supp. 406 (N.D. Ind. 1989). After a civil rights plaintiff was awarded compensatory and civil damages arising out of his incarceration in the county lockup facility, the defendant sheriff and deputy sheriffs moved for judgment notwithstanding the verdict or, in alternative, a new trial. The district court found that the evidence supported the jury award and the instruction on punitive damages was proper.

There was testimony that, during the plaintiff's two incarcerations, he was stripped and given only a white suicide gown to wear. He was placed in a cell with nothing in it but a steel bed frame, he was told to drink from the toilet, he was ridiculed for being gay and for having AIDS syndrome, and he was denied access to the telephone and other amenities.

The plaintiff alleged that the conditions of his confinement, pursuant to the sheriff's suicide watch policy, were unconstitutionally restrictive. He also alleged that correctional officers intentionally or recklessly violated his constitutional rights during one period of confinement. As to the allegations pertaining to the correctional officers,

the plaintiff specifically alleged that they denied him water and told him to drink out of the toilet, denied him access to the telephone, denied him all personal hygiene effects, denied him visitation, denied him writing materials and postage, made unauthorized disclosures of the fact that he suffers from AIDS-related complex and were deliberately indifferent to his medical needs.

The jury returned a verdict for the plaintiff with an award of $600 compensatory damages against all three defendants for one period of incarceration, $1000 punitive damages against two correctional officers for first period of incarceration and $200 compensatory damages against another correctional officer on the second period of incarceration. (Allen County Lockup Facility, Indiana)

U.S. Appeals Court
EQUAL PROTECTION
CLASSIFICATION
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
HYGIENE

Caudle-El v. Peters, 727 F.Supp. 1175 (N.D. Ill. 1989). A former inmate brought a civil rights action against correctional officers. The district court found that standing alone, the fact that prison officials deprived the inmate of all hygiene materials for six days while in segregation, although unpleasant, did not reach constitutional proportions when it resulted from temporary negligence of the prison officials in implementing otherwise constitutionally acceptable policies. (Sheridan Correctional Center, Illinois)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
PRETRIAL DETAINEE

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. 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. Appeals Court
FAILURE TO TRAIN
FAILURE TO PROTECT

Danese v. Asman, 875 F.2d 1239 (6th Cir. 1989). 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. District Court
DUE PROCESS
SEXUAL ABUSE

Gilson v. Cox, 711 F.Supp. 354 (E.D. Mich. 1989). A male inmate brought a civil rights action, claiming that a female corrections officer made various sexual advances and physically abused him, verbally abused him, and failed to provide toilet paper upon request. The officer moved for summary judgment, and the district court found that the allegations of verbal abuse did not state a constitutional deprivation actionable in a civil rights action, and the failure to provide toilet paper on request did not violate the constitutional proscription against cruel and unusual punishment. Genuine issues of material fact existed, precluding a summary judgment, on the substantive due process claim based on allegations that the officer grabbed the inmate's genitals and buttocks. The inmate had a liberty interest in "personal bodily integrity" which included the right to be free from sexual abuse. If the inmate could prove that his allegations are true and that the alleged infringement of his bodily integrity is "shocking to the conscience," the court found, a reasonable jury could find a violation of due process rights. (Huron Valley Mens Facility, Michigan)

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

Hardin v. Straub, 109 S.Ct. 1998 (1989). An inmate brought a Section 1983 action alleging that prison authorities deprived him of federal constitutional rights. The U.S. District Court dismissed the complaint and appeal was taken. The appeals court affirmed in an unpublished opinion. Upon grant of certiorari, the U.S. Supreme Court, reversing and remanding, found that state statutes suspending limitations periods for those under legal disability, including prisoners, until one year after disability has been removed was consistent with Section 1983, and thus, the inmate's action was not time barred though it had been filed after the expiration of a three-year statute of limitations period for personal injury actions.

In 1986, the petitioner, who was incarcerated in a Michigan state prison, filed a pro se complaint under 42 U.S.C.A. Section 1983 alleging that prison authorities had deprived him of his federal constitutional rights during 1980 and 1981. The federal district court sua sponte dismissed the complaint because it had been filed after the expiration of Michigan's 3-year statutory limitations period for personal injury actions, which is applicable in federal civil rights actions under 42 U.S.C.A. Section 1988 and the Court's decisions. The court of appeals affirmed, refusing to apply a Michigan statute that suspends limitations periods for persons under a legal disability, including prisoners, until one year after the disability had been removed.

Held: A federal court applying a state statute of limitations to an inmate's federal civil rights action should give effect to the State's provision tolling the limitations period for prisoners. The Court of Appeals' ruling to the contrary conflicts with **Board of Regents, University of New York v. Tomanio**, 446 U.S. 478, 1000 S.Ct. 1790, 64 L.Ed.2d 440, which held that limitations periods in Section 1983 suits are to be determined by reference to the appropriate state statute of limitations and the coordinate tolling rules, as long as the state law would not defeat the goals of the federal law at issue. The Michigan tolling statute is consistent with Section 1983's remedial purpose, since some inmates may be loathe to sue adversaries to whose daily supervision and control they remain subject, and even those who do file suit may not have a fair opportunity to establish the validity of their allegations while they are confined. Pp. 1999-2003. 836 F.2d 549 (C.A.6 1987) reversed and remanded. (Michigan State Prison)

U.S. Appeals Court
DISCIPLINE
RACIAL
DISCRIMINATION

Propst v. Leapley, 886 F.2d 1068 (8th Cir. 1989). An inmate filed a civil rights action alleging prison officials discriminated against him on the basis of race in finding him guilty of violating prison rules. The U.S. District Court found no discrimination, and the inmate appealed. The appeals court reversing and remanding, stated that the district court's finding that prison officials at the state correctional facility did not discriminate against the white inmate was clearly erroneous in light of evidence suggesting that an equally guilty party of another race was found not guilty, direct evidence of race based discrimination in the prison

disciplinary process, and evidence of prejudgment by the disciplinary committee. The plaintiff inmate became involved in an altercation with a black inmate, in the course of which each hit the other. Both were charged with "aggravated assault, assault fighting, possession or manufacture of weapons, flare of tempers, and minor physical contact." The white inmate was found guilty of aggravated assault, assault fighting, and possession or manufacture of weapons, and placed in segregation for fourteen days. The black inmate was found not guilty of all charges. The court held that it was "obvious" that the inmates "received disparate treatment at the hands of the disciplinary committee" from these results, given the facts. Further, an internal investigation of the disciplinary process at the facility ten months before contained the statement of an assistant warden that "we are inclined to be more lenient to blacks" and that the disciplinary committee feared charges of racism from black inmates. (Lincoln Correctional Center, Nebraska)

U.S. Supreme Court
42 U.S.C.A.
SECTION 1983
IMMUNITY

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

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

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

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

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

1990

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

Best v. District of Columbia, 743 F.Supp. 44 (D.D.C. 1990). Inmates brought an action against the District of Columbia and District of Columbia officials, alleging they were videotaped without their consent while they were handcuffed and chained. On the defendants' motion to dismiss or for summary judgment, the U.S. District Court found that the District of Columbia was a suable entity under Section 1983 as the District was a municipality, rather than a state or territory that was immune from suit under Section 1983, and the allegations were sufficient to state a claim for violation of the plaintiffs' privacy rights. (Lorton Reformatory, Lorton, Virginia)

U.S. District Court
RACIAL
DISCRIMINATION

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. District Court
RACIAL DISCRIMINATION

Sims v. Montgomery County Com'n., 766 F.Supp. 1052 (M.D. Ala. 1990). A group of officers in a county sheriff's department filed a class action lawsuit alleging that the department illegally discriminated against them on the basis of their race. The district court found that the sheriff's department failed to establish an affirmative defense to liability for racial harassment claims due to the victims' failure to take advantage of available avenues for relief. Evidence reflected that the sheriff's department did not view provisions of the county employee handbook and personnel regulations prohibiting racial harassment as applying to the department, the department clearly did not have procedures calculated to encourage victims of harassment to come forward, most white officers in the department did not know what conduct constituted racial harassment in violation of law or perceive that conduct as a serious infraction, and the county administrator and personnel board did not have authority to resolve discrimination complaints by the sheriff's department employees. (Montgomery County Sheriff's Department, Alabama)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION

Thomas v. U.S. Secretary of Defense, 730 F.Supp. 362 (D.Kan. 1990). White inmates brought an action challenging the decisions by officials at the United States Disciplinary Barracks to reject certain incoming mail and to deny their request to form a "white ethnic club." The district court found that the regulation authorizing officials to reject incoming mail that might be disruptive did not violate the first amendment either on its face or as applied to white inmates, and the officials did not violate the inmates' rights of due process, equal protection, or association by denying their request to form an ethnic club.

The United States Disciplinary Barracks regulation that allowed officials to reject incoming mail that communicated "information designed to encourage prisoners to disrupt the institution by strikes, riots, racial or religious hatred" was not violative of the first amendment on its face. The regulation was rationally related to a legitimate interest in protecting the barracks security, operated in a neutral fashion, and was narrow in its restrictions, and there were no other alternatives that would both accommodate the inmate's first amendment rights and serve security interest. Each publication was reviewed by an advisory board with an eye toward the regulation's security purposes, and there was no evidence of wholesale exclusion.

The United States Disciplinary Barracks officials did not violate the white inmates' rights of due process, equal protection, or association by denying their request to form a "white ethnic club" even though the Afro-American cultural organization and Latin studies group were allowed. Evidence indicated that the latter groups provided cultural support and assisted in the inmate rehabilitation, while the barracks director of mental health opined that the request to form a white ethnic club posed a potential security threat, served no rehabilitative purpose, and was in fact an attempt to form a racist organization rather than a study group. (United States Disciplinary Barracks, Leavenworth, Kansas)

1991

U.S. District Court
FAILURE TO PROTECT

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

or testimony in the court. The correctional officers did, however, state a Section 1983 cause of action against the Director of the Rhode Island Department of Corrections by alleging that the Director not only knew of the harassment of the correctional officers for their reporting the assault, but failed to act to cure the incidents of harassment when he had an obligation to do so. (Rhode Island Adult Correctional Institution)

U.S. District Court
RACIAL DISCRIMINATION

Hudson v. Thornburgh, 770 F.Supp. 1030 (W.D. Pa. 1991). Prison inmates brought an action alleging violations of their civil rights and the right to freedom of association based on prison officials' disbanding an inmate organization and on the basis of discipline they received allegedly for filing of the lawsuit. The district court found that the prison inmates in the inmate organization had no claim against prison officials for violation of 42 U.S.C.A. Section 1985(3) on the basis that prison officials disbanded the inmate organization because board members of the organization were black. There was no proof that the alleged racism in the prison was fostered by the staff, there was no evidence that any of the defendant prison officials made racist statements to the inmates, and the boards of the organization were racially mixed. (State Corr. Inst., Pittsburgh, Pennsylvania)

U.S. District Court
RACIAL DISCRIMINATION

Johnson v. Daniels, 769 F.Supp. 230 (E.D. Mich. 1991). An Africa-American inmate brought a Section 1983 action against an assistant warden and a mail room supervisor, claiming that black inmates, unlike white inmates, were not allowed to have nude pictures of white women. Following remand of original dismissal, the district court found that a genuine issue of material fact as to whether the mail room supervisor violated the inmate's constitutional rights by selectively enforcing prison regulations regarding erotic photographs based on racial animus precluded summary judgment; the allegation made by the inmate stated a triable claim of race discrimination. The fact that the supervisor was on the job when the alleged constitutional violation occurred did not, alone, render the inmate's action against the supervisor one against a state official in his official capacity, such that the Eleventh Amendment would bar imposition of liability under Section 1983. However, the record did not suggest that the assistant warden's alleged liability in connection with the alleged selective enforcement of the prison regulations, regarding erotic photographs based on racial animus stemmed from anything other than his supervisory role in that official capacity and, thus, he could not be held liable in his individual capacity, and neither the supervisor nor the assistant warden could be held liable under Section 1983 for official acts undertaken in their capacities as state officials. (Michigan Department of Corrections)

U.S. District Court
HOMOSEXUALS
SECURITY

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. District Court
CLASSIFICATION

Siddiqi v. Lane, 763 F.Supp. 284 (N.D. Ill. 1991). A state inmate filed a pro se, in forma pauperis Section 1983 complaint in connection with upgrading of and failure to reduce his security classification. The U.S. District Court dismissed the complaint sua sponte as frivolous, ruling that the inmate had no cause of action under Section 1983 in connection with upgrading of or failure to reduce his security classification, despite the contention that the classification decisions were motivated by the inmate's political and religious beliefs and legal activities. Under state law, the inmate had no liberty interest in his security classification, and thus no action pertaining to classification could be maintained under Section 1983. (Pontiac Correctional Center, Illinois)

1992

U.S. District Court
HANDICAP

Clarkson v. Coughlin, 783 F.Supp. 789 (S.D.N.Y. 1992). A deaf inmate filed a civil rights action against a prison, and other hearing impaired inmates sought to intervene. Prison officials filed motions to dismiss and to transfer. The inmate's action against prison officials for failure to accommodate her hearing impairment was rendered moot by the inmate's release on parole but it did not require a dismissal of the class action; other hearing impaired inmates had sought to intervene, indicating a strong likelihood that some other named plaintiff existed who would be able to represent the putative class adequately. A female inmate who was ineligible for enrollment in a unit created to provide resources for hearing impaired inmates at the male prison would be permitted to intervene in the class action, even though her hearing loss was not as severe as the named plaintiff's deafness; the hearing impaired inmate was incarcerated at a facility that provided no services for hearing impaired inmates and she had faced the possibility of disciplinary charges for failure to comply with instructions that she could not hear. (NY State Dept. of Corr. Services)

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

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
DISCRIMINATION
HOMOSEXUALS

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 discriminatory policy. (Franklin County Jail, Columbus, Ohio)

U.S. Appeals Court
ACCESS TO COURT
42 U.S.C.A.
Section 1983

Holloway v. Alexander, 957 F.2d 529 (8th Cir. 1992). An inmate brought a Section 1983 action against state correctional officials asserting that the living conditions and punitive isolation area of the maximum security prison violated his Eighth Amendment rights. The U.S. District Court found in favor of the correctional officials, and the inmate appealed. The court of appeals found that the use of shackles on the inmate in the course of the trial did not deprive the inmate of a fair trial. The inmate's status as a dangerous felon did not have any bearing on the issue the jury had to decide. Any general prejudice caused by the presence of the shackles was cured when the district court admonished the jury to disregard the shackles in their consideration of his case, and the inmate's status was readily apparent from the nature of the case. (Maximum Security Prison, Arkansas)

1993

U.S. District Court
CLASSIFICATION
RACIAL
DISCRIMINATION

Arney v. Thornburgh, 817 F.Supp. 83 (D.Kan. 1993). Inmates filed a civil rights complaint alleging race discrimination in the assignment of inmates to various units. On the defendants' motion for summary judgment, the district court found that the prisoners failed to establish race discrimination in the assignment of inmates to a unit at the prison where the Department of Corrections provided a detailed statistical profile of the racial composition of the entire Kansas prison population, the population at the Lansing facility and the Hutchinson Correctional Facility. The information provided showed a racial composition of these areas that was consistent with that of the overall inmate population. (Lansing Correctional Facility and the Hutchinson Correctional Work Center)

U.S. District Court
RACIAL
DISCRIMINATION

Betts v. McCaughtry, 827 F.Supp. 1400 (W.D. Wis. 1993), affirmed, 19 F.3d 21. Prisoners sued prison officials under Section 1983 alleging violation of constitutional rights arising from prison regulations censoring certain musical cassettes and banning carved hairstyles, long fingernails, and the wearing of sunglasses and stocking caps indoors. The district court found that the prison's practice of screening all music cassettes carrying parental advisory labels was not a pretext for censoring rap music and did not show racial discrimination. Prisoners failed to show that the audience for the music was exclusively black, and there was no direct evidence that the purpose was to discriminate against African-American inmates. In addition, evidence did not show that the prison's grooming regulations were racially motivated in violation of equal protection, although prisoners characterized prohibited styles and expressions of African-American heritage. There was no evidence that the grooming practices in question were exclusively expressions of such heritage or any evidence to suggest that prison officials adopted regulations with the purpose of discriminating against African-American inmates. Furthermore, evidence failed to support black prisoners' claims of gender discrimination based upon the denial of grooming privileges accorded to female inmates at another institution to grow their nails long and retain certain personal property with which to groom hair and fingernails. The grooming privileges were in parity and minor differences that existed were not of constitutional significance. Officials also had legitimate security

concerns that carved hair designs promoted gang-related identification, that wearing sunglasses and stocking caps indoors would allow inmates to escape identification in the event they participated in a mass disturbance, and that long fingernails could be used as weapons against guards and other inmates. There was no evidence that regulations could be drawn to be less intrusive. In addition, these rules did not violate due process where the challenged regulations were reasonably related to legitimate security concerns. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
HANDICAP

Casey v. Lewis, 834 F.Supp. 1569 (D.Ariz. 1993). Disabled inmates brought an action against prison officials alleging that conditions in a prison system violated their Eighth Amendment rights and the Rehabilitation Act. The district court found that lack of accessible bathrooms, showers, and cells for inmates who were confined to wheelchairs, had artificial limbs, or were partially paralyzed violated the Eighth Amendment. However, disabled inmates did not establish that instances in which they did not receive special equipment or consideration rose to a level of constitutional violations. The inmates ultimately received equipment, there was no evidence that the equipment could have been obtained more quickly, and, to the extent that there was a delay, prison officials implemented new policies to remedy the situation. The court also found that the consistent pattern of delays in inmates' receipt of hearing aids when tests established hearing losses violated the Eighth Amendment, even though inmates did not establish any harm that resulted from the delays. A blind inmate, however, did not establish that prison officials' treatment of him violated the Eighth Amendment, even though officials did not place him in a specific rehabilitation program and notwithstanding his allegations that he could not clean his cell properly and that he was unable to inspect his food for foreign objects. The officials had the inmate evaluated on numerous occasions and recommended services, provided him with numerous talking books, catalogs of equipment from which he could order, and assistance in learning braille, and made every effort to assure that other inmates and guards could not tamper with his food. Prison officials did not deny the blind inmate access to courts by refusing to provide braille legal books which the inmate requested. The officials offered, on several occasions, a legal assistant to read materials to him, but the inmate declined those offers. Finally, it was found that the mobility impaired, hearing impaired, and blind inmates failed to establish a violation of the Rehabilitation Act by prison officials, even though the mobility impaired and blind inmates were "handicapped" within the meaning of the Act and prison programs received federal funds. Other than one occasion on which one mobility impaired inmate was unable to participate in sick call, the inmates did not identify particular programs from which they were excluded due to their handicaps. (Arizona Department of Corrections)

U.S. District Court
DISCIPLINE
RACIAL
DISCRIMINATION

Giles v. Henry, 841 F.Supp. 270 (S.D.Iowa 1993). A black inmate sued prison officials alleging that discipline imposed on him for playing his radio too loud violated the equal protection clause. The district court found that the African-American inmate failed to show that he was similarly situated to three white inmates who were sanctioned for playing either a television or radio too loud so as to establish a violation of the equal protection clause in the disciplinary decision that gave him harsher punishment. Two white inmates were found to have violated a different rule of the prison handbook and there was no discernible pattern to the sanctions because one inmate received a more severe sanction than the African-American while the other received a substantially less severe sanction. A third white inmate received the same sentence with part suspended to encourage good conduct. Evidence that imposition of sanctions on the inmate might have been arbitrary did not equate to a finding that it was done with discriminatory purpose based on the inmate's race in violation of equal protection. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. Appeals Court
HARASSMENT

McDowell v. Jones, 990 F.2d 433 (8th Cir. 1993). An inmate brought an action under Section 1983 and Section 1985(3), alleging that prison officials violated his rights during his incarceration. The U.S. District Court granted the officials' motions to dismiss and for summary judgment, and the inmate appealed. The court of appeals, affirming the decision, found that the inmate's allegations that prison staff harassed him generally and harassed him to dissuade him from filing a grievance about his seized property did not allege a violation of his constitutional rights for purposes of Section 1983. The inmate did not allege that he was denied access to grievance procedures. Verbal threats and name calling were not actionable under Section 1983, and the inmate could have pursued a state post-deprivation remedy for conversion of his property. In addition, the prison superintendent was not liable under Section 1983 for alleged violations of the inmate's rights. The superintendent denied his involvement in many alleged violations and the inmate agreed that the superintendent did not participate in the alleged violations and said that he had sued the superintendent only because of the superintendent's position. (Missouri Training Center for Men)

U.S. Appeals Court
HANDICAP

More v. Farrier, 984 F.2d 269 (8th Cir. 1993), cert. denied, 114 S.Ct. 74. Inmates brought a Section 1983 action against prison officials challenging the refusal to provide in-cell cable television service to wheelchair-bound inmates. The U.S. District Court found an equal protection violation, and an appeal was taken. The appeals court, reversing the decision, found that the prisoners had no fundamental right to in-cell cable television. Furthermore, the prison officials did not violate the inmates' rights to equal protection when they refused to install the cable television service in the inmates' individual cells; officials could rationally decide that installing service was not worth the effort, even if the cost was minimal, where the officials provided inmates with substantially equivalent access to television a short distance from their cells. (Iowa State Penitentiary)

U.S. District Court
CONSPIRACY

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 allegation that police officers gathered privately in a room at the hospital to talk about the events that had transpired when they physically subdued the plaintiff did not establish the plaintiff's claim for conspiracy to interfere with his civil rights. The officers' alleged purpose for meeting, to discuss what to report and how to report it, was not so obvious and the officers were present at the hospital to receive treatment for injuries they sustained as a result of the incident with the plaintiff. (Kent County Sheriff's Department, Michigan)

U.S. District Court
ACCESS TO COURT
HANDICAP

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 prisoner failed to establish that his blindness and lack of access to legal materials printed in Braille effectively denied him a right of access to courts, notwithstanding that his blindness effectively denied him access to the prison law library, because the prisoner failed to allege that there was no legal assistance program for prisoners in the prison. (New York)

U.S. District Court
HOMOSEXUALS
SEX
DISCRIMINATION

Star v. Gramley, 815 F.Supp. 276 (C.D.Ill. 1993). A prisoner brought a Section 1983 action against a warden to challenge the refusal to allow him to wear women's makeup and apparel. The warden moved for summary judgment. The district court found that prohibiting cross-dressing and wearing of female makeup did not violate the First Amendment or equal protection clause. Legitimate penological and security concerns overrode any First Amendment right of the prisoner to freedom of expression by cross-dressing as a female and wearing female makeup. The warden asserted that allowing the inmate to wear women's garments and makeup could promote homosexual activity or assault. In addition, a potentially drastic change in identity could facilitate escape. Also, providing female clothing and makeup at the commissary would make little fiscal sense. Prohibiting the male prisoner from wearing a dress treated him the same as similarly situated male inmates and, therefore, did not violate the equal protection clause. Although women inmates are allowed to wear pants, different treatment between men and women cannot sensibly be compared. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
RACIAL DISCRIM-
INATION
PAROLE

Vineyard v. County of Murray, Ga., 990 F.2d 1207 (11th Cir. 1993). 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
HARASSMENT

Anthony v. County of Sacramento Sheriff's Dept., 845 F.Supp. 1396 (E.D. Cal. 1994). A black female deputy sheriff brought a Section 1983 action against a county, county sheriff's department, supervisors, co-workers, and a civilian jail employee, alleging sexual and racial harassment and retaliation for her defense of black inmate rights. The defendants moved to dismiss. The district court found that the complaint alleged a continuing violation extending into California personal injury action one-year limitations period and, thus, the complaint was not time barred. (Sacramento County Sheriff's Department, California)

U.S. District Court
RACIAL DISCRIMINATION
TRANSFERS

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. District Court
EQUAL PROTECTION
PAROLE

Grimm v. Jackson, 845 F.Supp. 383 (W.D.Va. 1994). Inmates brought a Section 1983 action challenging a policy of the Virginia Parole Board, under which the Board could defer parole consideration for two or three years for inmates with at least ten years or a life sentence remaining to be served. On the state's motion for summary judgment, the district court found that the policy did not deprive the inmates of a constitutionally protected liberty interest. Neither Virginia parole statutes nor prior practices of the Board created a liberty interest in annual parole hearings, and the policy did not violate the ex post facto clause. The Board had statutory discretion since 1977 to defer parole review hearings for more than one year upon reasonable cause, and the fact that the Board had granted inmates the privilege of annual hearings could not supersede the statute. Finally, the policy did not violate the equal protection clause. The classification used in the deferral policy divided the inmates on the basis of the length of sentence and violence of offense and thus were not suspect criteria and did not affect any fundamental right, and the policy was rationally related to a legitimate state interest of enhancing the efficiency of the parole review process and reducing inmates' false hopes. (Virginia Parole Board)

U.S. District Court
HANDICAP

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

U.S. District Court
SEX DISCRIMINATION
HANDICAP

Hughes v. Bedsole, 913 F.Supp. 420 (E.D.N.C. 1994). A former shift supervisor at a county jail filed suit against the county sheriff's department and others following her termination, alleging sex discrimination, violation of her free speech rights, and other claims. The court ruled that the plaintiff's termination was not in retaliation for her exercise of free speech that occurred when she allegedly complained to the county chaplain and sheriff about understaffing at the jail. The court found that her complaints did not involve matters of public concern, but rather that she was "simply grousing" about the conditions of her own employment. The plaintiff alleged a male staff member was not terminated for a similar incident (allowing jail doors to be unlocked); the court found that evidence failed to establish with certainty that the male employee was responsible for the unlocked doors, and that an equal protection violation did not occur. The court found that the sheriff's failure to demote the shift supervisor to road patrol, rather than terminating her, did not constitute handicap discrimination in violation of the Federal Vocational Rehabilitation Act because the employee alleged she was capable of performing both duties. The court also found the supervisor did not have a property interest in her job sufficient to support a due process claim, and that the supervisor was not subjected to sex discrimination. (Cumberland County, North Carolina)

U.S. Appeals Court
RACIAL DISCRIMINATION

Moyo v. Gomez, 32 F.3d 1382 (9th Cir. 1994), cert. denied, 115 S.Ct. 732, modified, 40 F.3d 982. A prison officer sued the California Department of Corrections for alleged retaliation in violation of Title VII of the Civil Rights Act. The U.S. District Court dismissed the action for failure to state a claim on which relief could be granted, and appeal was taken. The appeals court, reversing and remanding, found that the former prison employee who claimed that he was disciplined for his refusal to follow an alleged prison practice of denying showers after work periods to black prisoners while granting them to white prisoners, stated a triable claim under Title VII, regardless of whether the inmates are "employees" under Title VII. Requiring an employee to discriminate is an unlawful employment practice. (California Medical Facility)

U.S. Appeals Court
RACIAL DISCRIMINATION

Sockwell v. Phelps, 20 F.3d 187 (5th Cir. 1994). Inmates filed a Section 1983 action against former Louisiana prison officials alleging that the general policy of segregating two-person cells violated equal protection. The U.S. District Court found for the inmates and cross appeals were taken. The court of appeals found that a general policy of racially

segregating two-person cells at the state penitentiary violated equal protection, despite the contention that security and discipline concerns demanded segregation. Offending prisoners responsible for violence should be disciplined individually, and any segregation to prevent racial violence must be based on an individualized analysis. (Louisiana State Penitentiary)

U.S. District Court
SEX
DISCRIMINATION

Thompson v. Wyandotte County Detention, 869 F.Supp. 893 (D.Kan. 1994). A detention center inmate brought a civil rights action alleging that she had been viewed by males while she was showering. The district court found that the inmate failed to state a cause of action for sexual discrimination when she alleged that officials permitted males to observe her in the nude while she showered. There was no evidence that the inmate was treated differently from males or discriminated against due to her gender. (Wyandotte County Detention, Kansas)

U.S. District Court
ADA - Americans with Disabilities Act
CONDITIONS
HANDICAP

Torcasio v. Murray, 862 F.Supp. 1482 (E.D. Va. 1994). An inmate brought a suit against state officials, alleging that his civil rights were violated by prison officials' failure to provide for his morbidly obese condition. The district court found that the inmate failed to state an Eighth Amendment violation, except as to the size of the toilet in his cell. The prisoner, who was five feet seven inches tall and weighed in excess of 460 pounds and had a girth of 78 inches, alleged that the handrails for the toilet facilities were inadequate to accommodate him. In addition, the commode was so small that the defendant's groin and genitals were often submerged in the toilet bowl. The court found that the inmate did state a cause of action under the Rehabilitation Act (ADA) in connection with claims that the shower, toilet, pod tables, cell doors, outdoor recreation activities, indoor recreation activities, location of the housing unit and his cell, and conditions of his confinement in the infirmary were unreasonable. (Virginia State Prison)

U.S. District Court
CRIPA- Civil Rights of Inst. Persons Act

U.S. v. State of Mich., 868 F.Supp. 890 (W.D. Mich. 1994). The Department of Justice (DOJ) filed a complaint for injunctive relief to enjoin the state from denying access of DOJ employees and agents to state prisons, inmates, records or facility staff pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). On the DOJ's motion for a preliminary injunction, the district court found that the CRIPA did not authorize the Attorney General to enter and inspect secure state facilities without the state's consent, prior to litigation. The statute's plain language did not grant prelitigation investigative access either explicitly or implicitly, nor did the legislative history support a claim that prelitigation access was authorized. (Crane Correctional Facility and Scott Correctional Facility, Michigan)

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

Walker v. Bates, 23 F.3d 652 (2nd Cir. 1994). A prisoner brought a civil rights action against a disciplinary hearing officer who denied his request to call witnesses at a hearing which resulted in confinement in the Special Housing Unit. The U.S. District Court found that reversal of the decision on administrative appeal cured any procedural defects in the hearing, and dismissed the case. The inmate appealed. The appeals court, reversing and remanding, found that absent a showing of a good reason for denial of the request to call witnesses at the disciplinary hearing, the fact that the prisoner was successful in the administrative appeal process did not bar his claim for relief under Section 1983. (Southport Correctional Facility, New York)

U.S. District Court
EQUAL PROTECTION

West v. Virginia Dept. of Corrections, 847 F.Supp. 402 (W.D.Va. 1994). A civil rights action was brought by a female youthful offender challenging the denial of her participation in the Virginia Boot Camp Incarceration Program (VBCIP). The court found that the denial of participation to women violated equal protection despite the contention that the program was established to address problems that were more pressing in men's prisons and that limiting the program to men's prison was justified because of limited resources. The district court found that the program was subject to the "intermediate scrutiny" standard of equal protection analysis. The court noted that while discrimination on the basis of race or national origin is subject to "strict scrutiny" on an equal protection challenge, classifications based on economic factors or nonsuspect classifications are subject to a rational basis standard of review, while sex-based classifications are given "intermediate" scrutiny. To withstand "intermediate scrutiny" equal protection analysis, a statutory classification must be substantially related to an important government objective. Legislative distinctions based on gender may thus be justified by an important governmental interest in recognizing demonstrated differences between males and females. Intermediate scrutiny will reject regulations based on stereotypical and generalized conceptions about the differences between males and females. (Virginia Boot Camp Incarceration Program)

U.S. District Court
CONDITIONS
DISCRIMINATION
EQUAL PROTECTION
SEX
DISCRIMINATION
MEDICAL CARE

Women Prisoners v. District of Columbia, 877 F.Supp. 634 (D.D.C. 1994). A class action was brought on behalf of female prisoners in the District of Columbia. The district court found that the Eighth Amendment was violated by sexual harassment, living conditions, and lack of proper medical care. Sexual harassment at the prison facilities amounted to wanton and unnecessary subjection of pain. It was so malicious that it violated contemporary standards of decency and, in combination, sexual assaults, vulgar sexual remarks of prison officials, a lack of privacy within cells, and refusal of some male guards to announce their presence in the living areas of women prisoners, constituted a violation of the

Eighth Amendment because they mutually heightened the psychological injury of the women prisoners. 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. In addition, the infestation of roaches, torn mattresses, inadequate bathing and toilet facilities, excessive crowding, lack of mechanical ventilation, unclean floors, inadequate drainage, inadequate lighting, and uncovered dumpsters raised the risk of illness and injury to a constitutionally unacceptable level. The combination of conditions surrounding the inadequate heating unit in prison created an objective violation of the Eighth Amendment, as the malfunction in the heating unit caused freezing temperatures in cells and not all prisoners were given an adequate number of blankets. Deliberate indifference was demonstrated by the prison official's knowledge of the conditions, knowledge of their danger, and the failure to make changes. The female prisoners demonstrated that prison officials had deviated from the standard of acceptable medical care for women prisoners through deficient gynecological examinations and testing, inadequate testing for sexually transmitted diseases, inadequate follow-up care, inadequate health education, inadequate prenatal care, inadequate prenatal protocol, and ineffective prenatal education. (District of Columbia Correctional System- the Lorton Minimum Security Annex, the Correctional Treatment Facility, the Central Detention Facility)

1995

U.S. District Court
CONDITIONS
REMEDIES

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

U.S. District Court
ADA-AMERICANS WITH DISABILITIES ACT
DISCRIMINATION
HANDICAP
SEX DISCRIMINATION

Clarkson v. Coughlin, 898 F.Supp. 1019 (S.D.N.Y. 1995). Male and female deaf and hearing-impaired inmates sued correctional officials alleging failure to accommodate their hearing impairments in violation of the Rehabilitation Act, the Americans with Disabilities Act (ADA), due process, and the Eighth Amendment. The inmates also alleged violation of equal protection because male inmates were granted access to a sensorially disabled unit, but not females. The district court found that the defendants violated all statutes and constitutional provisions under which the inmates had sought relief, warranting declaratory and injunctive relief. The court found that deaf and hearing-impaired inmates had a parole-related liberty interest at stake entitled them to the presence of a qualified interpreter at hearings and other proceedings.

The court found violation of the requirements of the ADA with regard to protection against discrimination and the location of accessible services, activities and facilities. Although the defendants had distributed an ADA manual to staff, the manual did not provide information to inmates about accommodations that were available to them, nor did it contain procedures for employees' handling of inmate requests for accommodation. The court found that the defendants violated the ADA by failing to provide the inmates with the opportunity to request auxiliary aids and services of their choice. The court found violation of ADA's self-evaluation obligations, noting that while the department did complete the physical plant and personnel portions of the self-evaluation, those did not include an evaluation of inmate housing. The court found that the defendants violated the Rehabilitation Act and ADA by failing to establish an effective procedure for deaf and hearing impaired inmates regarding accommodations and assistive services, and by failing to provide qualified interpreters for various aspects of the reception and classification process.

The court found that the defendants violated the Rehabilitation Act and ADA by failing to provide them with timely access to telephone communication devices, close caption decoders for televisions, and special alarms to alert them in the event of a fire. The court found that the defendants violated the Rehabilitation Act and ADA by excluding deaf and hearing-impaired inmates from participation in programs such as academic and vocational programs and rehabilitative counseling, on the basis of their disability. The court noted that no qualified sign language interpreters were made available to such inmates for educational purposes, effectively excluding them from programs.

According to the court, medical treatment provided to deaf and hearing-impaired inmates without the assistance of a qualified interpreter or other assistive devices was a failure to provide sufficient information for informed consent, thereby violating inmates' due process

rights to be free from unwanted medical treatment. At least two inmates experienced improper and possibly harmful treatment as a result. The use of sign language interpreters who were not bound to maintain confidentiality in the administration of medical treatment violated the inmates' constitutional right to privacy.

The court found that the defendants violated the Rehabilitation Act and ADA by conducting disciplinary, grievance and parole hearings for deaf and hearing-impaired inmates without affording them interpretive services or assistive devices necessary to render their opportunity to be heard meaningful.

The court held that even if all of the needs of deaf and hearing-impaired inmates were met at a sensorially disabled unit at one prison, the defendants violated their rights under the Rehabilitation Act and ADA by transferring them to other facilities for disciplinary, safety and/or medical reasons. Also, the court found that the fact that there were more male deaf and hearing-impaired inmates requiring services than female did not justify the fact that many male inmates--but no female inmates--had access to a prison's sensorially disabled unit. (New York Department of Correctional Services)

U.S. District Court
RACIAL DISCRIMINATION
TRANSFERS
CLASSIFICATION

Franklin v. Barry, 909 F. Supp. 21 (D.D.C. 1995). Hispanic prisoners incarcerated in District of Columbia correctional institutions sought equitable relief, declaratory judgment and damages from alleged violations of their constitutional rights by a policy that denies alien prisoners transfers to minimum security facilities. The district court found that the policy, which was based on alienage, was not discriminatory, but also that class certification was appropriate for the purpose of other claims raised by the prisoners. The court noted that the prisoners had alternative means to challenge INS detainers and that transfer to a minimum security facility was not a protected liberty interest. (District of Columbia correctional facilities)

U.S. District Court
HARASSMENT

Geddes v. Cox, 880 F.Supp. 767 (D.Kan. 1995). A prisoner who had been housed in a county jail brought a federal civil rights action against jail employees alleging that he was subjected to verbal abuse. The employees moved for summary judgment. The district court found that the claim of verbal abuse or harassment, without more, does not state a violation of any constitutional right and is not a claim cognizable under the federal civil rights statute. (Meade County Jail, Meade, Kansas)

U.S. Appeals Court
RACIAL DISCRIMINATION
DISCIPLINE

Harris v. Ostrout, 65 F.3d 912 (11th Cir. 1995). A prisoner filed a pro se civil rights action against five prison officers and employees alleging various violations of his rights. The district court granted summary judgment for the defendants, but the appeals court affirmed in part and reversed in part. The appeals court found that summary judgment was precluded for the prisoner's allegation that a correctional officer cited him for disciplinary violations because of his race and his prior litigation activities; if proven, these allegations would violate the equal protection clause. The court noted that corroborating affidavits by fellow prisoners created a fact issue which precluded summary judgment. (Martin Correctional Institution, Florida)

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

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

U.S. District Court
ACCESS TO COURT
CORRESPONDENCE

Jermosen v. Coughlin, 877 F.Supp. 864 (S.D.N.Y. 1995). An inmate brought a Section 1983 civil rights action against correspondence clerks and various prison officials, alleging that the defendants improperly tampered with his privileged correspondence. On the parties' motion for summary judgment the district court found that the inmate failed to demonstrate that any prison official, with the possible exception of one correspondence clerk, came in contact with the inmate's mail which was allegedly tampered with, nor did the inmate demonstrate that any of the supervisory officials had any knowledge of or personal involvement in any of the alleged incidents, as required to support the Section 1983 claim. Furthermore, even if prison officials had tampered with the inmate's privileged mail, the officials were no more than negligent and did not act with deliberate or callous indifference to the inmate's constitutional rights. (Sing Sing Correctional Facility, New York)

U.S. District Court
RACIAL DISCRIMINATION

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 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
DISCRIMINATION
EQUAL PROTECTION
42 U.S.C.A.
Section 1983

Pagan v. Dubois, 884 F.Supp. 25 (D. Mass. 1995). Latino inmates brought a civil rights action against prison officials, challenging the alleged lack of Spanish-speaking prison staff and Latino cultural programs. On the plaintiffs' motion for class certification, the district court found that the class of Latino inmates was overbroad with regard to a claim that a lack of prison staff able to communicate with inmates in Spanish violated equal protection. Latino prisoners who spoke and wrote English were not harmed by the conduct, and the plaintiffs did not claim that they did not write and speak English. In addition, the class of Latino inmates was not entitled to class certification with regard to a claim that the prison failed to provide Latino cultural programs, in view of the potential intra-class conflict between class members who were part of different Latino cultures. (Massachusetts Correctional Institution, Shirley, Massachusetts)

U.S. Appeals Court
SEXUAL HARASSMENT
SEARCHE

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
SEXUAL HARASSMENT

Smith v. U.S., 896 F.Supp. 1183 (M.D.Fla. 1995). Residents of a halfway house brought an action against the facility and its manager to recover under Bivens for sexual harassment allegedly perpetrated by an employee. The district court held that the facility and manager were not liable for an employee's sexual harassment of residents as there was not causal connection between the acts of the facility and its manager and the alleged civil rights violation committed by an employee. The employee met or exceeded all requirements for employment at the facility and signed a document acknowledging that he would abide by a facility policy not to discriminate on the basis of sex. (Goodwill Industries-Suncoast Inc., Florida)

U.S. District Court
ADA-AMERICANS WITH DISABILITIES ACT
HANDICAP

Staples v. Virginia Dept. of Corrections, 904 F.Supp. 487 (E.D.Va. 1995). A paraplegic inmate brought an action against state corrections officials and a private correctional management corporation alleging violation of his civil rights and rights under the Rehabilitation Act and the Americans with Disabilities Act (ADA). The district court found that ADA is not applicable in a state prison context. The court ruled that the corporation was amenable to a § 1983 suit, but that the alleged actions did not constitute cruel and unusual punishment. The inmate alleged that he was placed in an infirmary where he was not monitored during the night and that it took up to 30 minutes to help him empty his bowels at night. The court noted that the inmate had failed to cooperate with his daytime bowel regimen. (Greensville Correctional Center, Virginia)

1996

U.S. District Court
DISCRIMINATION

Abordo v. State of Hawaii, 938 F.Supp. 656 (D.Hawai'i 1996). A Native American inmate confined at a maximum security prison filed a civil rights action alleging that prison officials violated his equal protection rights and his rights under the Religious Freedom Restoration Act (RFRA) by requiring him to have his hair cut to conform with prison hair length regulations. The district court found that the regulations did not violate the inmate's rights. The court noted that while the regulation may have shown intentional discrimination against inmates with long hair, the regulation was reasonably related to legitimate penological interests. The court also found that the difference in hair length policies between male prisons and female prisons did not violate the equal protection clause because the disparity was due to differing security concerns between the prisons and not because of any illegitimate discrimination on the basis of gender. (Halawa Correctional Facility, Hawaii)

U.S. District Court
ADA-AMERICANS WITH DISABILITIES ACT
DISCRIMINATION

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. Appeals Court
ADA-AMERICANS WITH DISABILITIES ACT

Crowder v. True, 74 F.3d 812 (7th Cir. 1996). A federal inmate brought a Bivens action based on violations of his Fifth Amendment rights in connection with his administrative detention and his Eighth Amendment rights in connection with accommodation and treatment of his paraplegia. The district court dismissed the case and the inmate appealed. The appeals court affirmed, finding that the inmate's allegations regarding treatment and accommodation of his medical condition did not support an Eighth Amendment claim nor did it allege violations of the Americans with Disabilities Act (ADA) or the Rehabilitation Act. The inmate had alleged that he was denied his wheelchair because it did not fit through cell doors, that he was denied physical therapy sessions, that he was deprived of exercise, recreation and hygienic care, and that he was denied reasonable and necessary medical care. (Metropolitan Correctional Center, Chicago, Federal Bureau of Prisons)

U.S. Appeals Court
ADA-AMERICANS WITH DISABILITIES ACT
HANDICAP
DISCIPLINE

Duffy v. Riveland, 88 F.3d 1525 (9th Cir. 1996). A deaf inmate sued prison officials under the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 (RA) for failure to provide a certified interpreter at disciplinary and classification hearings. The district court granted summary judgment for the officials, but the appeals court reversed in part. The appeals court found that the state was not entitled to Eleventh Amendment immunity from the ADA and RA claims and that state regulations created a liberty interest in disciplinary hearings. The court found that the inmate's civil rights were not violated but that whether the interpreter was qualified under ADA was a fact issue that must be resolved on remand. The court also found that under state law, disciplinary hearings are quasi-judicial and required a certified interpreter. The court noted that disciplinary and classification hearings may be considered programs within the definition of the Rehabilitation Act and therefore may be considered programs under ADA. The inmate alleged that an interpreter was not qualified under ADA, claiming that the interpreter signed in a different way and that he did not understand some of her signs. (Washington State Reformatory)

U.S. Appeals Court
ADA-Americans with Disabilities Act
HANDICAP

Duffy v. Riveland, 98 F.3d 447 (9th Cir. 1996). A deaf inmate who was allegedly denied an interpreter at prison disciplinary and classification proceedings brought an action against prison officials under the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), the Civil Rights Act, and state law. The district court entered summary judgment in favor of the officials; the appeals court affirmed in part, reversed in part and remanded. The appeals court found that prison disciplinary hearings were quasi-judicial in nature for the purposes of a Washington statute, requiring the appointment of a qualified interpreter if a hearing-impaired person is a party or witness. (Washington State Reformatory)

U.S. District Court
RACIAL DISCRIMINATION

Eldridge v. Morrison, 970 F.Supp. 928 (M.D.Ala. 1996). An employee brought an action against a corrections department and officials alleging violation of Title VII, § 1983 and other statutes. The district court held that the employee failed to establish a prima facie Title VII claim of race discrimination based on his suspension and termination. The court also held that the employee failed to establish a prima facie Title VII claim of retaliation. The black employee alleged racial discrimination because he received a five-day suspension for violating a correctional facility rule while a white employee received only a reprimand for violating the same rule. The court found that the two employees were not similarly situated because the black employee had previously been disciplined 13 times while the white employee had been disciplined only twice. (Staton Correctional Institution, Alabama)

U.S. District Court
SEXUAL HARASSMENT

Fleming v. South Carolina Dept. of Corrections, 952 F.Supp. 283 (D.S.C. 1996). An employee sued her employer, a state corrections department, alleging retaliation in violation of Title VII. The district court denied the employer's motion for summary judgment, finding that the employee's refusal to submit to a supervisor's sexual advances was a protected opposition of an unlawful employment practice, and that a genuine issue of material fact existed regarding whether transfers and a lower performance evaluation were causally related to the protected activity. The court held that summary judgment was precluded by the existence of genuine issues of material fact regarding the deliberateness of the employer's actions, the intolerability of the working conditions, and whether the employer retaliated in the form of creating a hostile work environment. The court found that a reasonable person could have found that alleged harassment was hostile and abusive where evidence was presented that the correctional officer was repeatedly transferred and was left on her post without relief. The court noted that officers had to rely on co-workers and supervisors to protect their safety and well-being. (Perry Correctional Institution, South Carolina)

U.S. District Court
ADA-Americans with Disabilities Act

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

court also noted that an inmate's parole eligibility date and mandatory parole release date are estimates only, subject to change based on changes in an inmate's other classifications. According to the court, an inmate has no constitutional right to be paroled at all before the expiration of his valid criminal sentence--let alone on a specific date. (Virginia Department of Corrections)

U.S. District Court
ADA-AMERICANS WITH DISABILITIES ACT

Little v. Lycoming County, 912 F.Supp. 809 (M.D.Pa. 1996). A female inmate brought a § 1983 action against county officials and staff asserting claims under the Eighth Amendment and the Americans with Disabilities Act (ADA). The district court granted the defendants' motion for summary judgment. The court dismissed the inmate's claim of cruel and unusual punishment due to exposure of the inmate to excessive levels of environmental tobacco smoke (ETS), noting that the inmate's single reported instance of congestion and coughing allegedly due to ETS was insufficient to trigger constitutional liability. The court ruled that the Americans with Disabilities Act is not applicable to facilities provided for prisoners in state prisons, granting county prison officials and medical staff qualified immunity from the inmate's claims because the right of inmates to protection was not clearly established at the time of the alleged injury. The court also found that the inmate's alleged knee and arthritic impairment was not "substantial" within the meaning of the Act, and that there was no record of complaints from the inmate about difficulty in using stairs. The court found that the prison complied with the requirements of the Eighth Amendment through its considerable and diligent efforts to address the inmate's multiple, almost daily medical problems and concerns. (Lycoming County Prison, Pennsylvania)

U.S. District Court
RELIGION
EQUAL PROTECTION

Lucero v. Hensley, 920 F.Supp. 1067 (C.D.Cal. 1996). Native American inmates brought a pro se § 1983 action against correctional officers alleging interference with their ability to practice their traditional religion in violation of the First, Eighth, and Fourteenth Amendments. The district court found that the inmates failed to show that refusal to let them keep ceremonial animal hides in housing units or in separate lockers violated a mandatory precept of their religion. The court also found that the inmates failed to show that they could not accomplish their religious mandates without a full-time Native American chaplain or that alleged interference with their religious activities inflicted pain in violation of the Eighth Amendment. But the court held that the officers failed to show a good-faith attempt to treat different religious groups equally, entitling inmates to pursue their equal protection claim based on failure to employ a full-time Native American chaplain, as the prison employed a full-time rabbi for an equal number of Jewish inmates at the facility. The court noted that several inmates had been ordained to perform certain religious ceremonies, and that the prison provided access to a sweat lodge 13 hours a day, seven days a week. (California Men's Colony, San Luis Obispo)

U.S. District Court
SEXUAL ABUSE

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. District Court
ADA-AMERICANS WITH DISABILITIES ACT
DISCRIMINATION
HANDICAP

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. District Court
DISCRIMINATION
EQUAL PROTECTION

Rawls v. Sundquist, 929 F.Supp. 284 (M.D.Tenn. 1996). State death row inmates and donors who had given a satellite dish to the State of Tennessee for use by death row inmates, brought a § 1983 action against the state alleging that removal of the satellite dish violated due process

and equal protection rights. The district court found that the contract clause did not create a property interest in the satellite on the part of the donors and that a prison policy governing inmate organizations did not provide death row inmates with a liberty interest in the satellite dish. The court also found that the state did not deny the inmates' equal protection rights by denying them access to the satellite dish while allowing other inmates such access. The court noted that inmates do not have a constitutional right to satellite/cable equipment for television. (Unit Two at Riverbend Maximum Security Institution, Tennessee)

U.S. District Court
ADA-AMERICANS WITH DISABILITIES ACT
DUE PROCESS

Roe v. County Com'n of Monongalia County, 926 F.Supp. 74 (N.D.W.Va. 1996). A mental health patient brought an action under the Americans with Disabilities Act (ADA) against a county and county officials for alleged statutory and constitutional violations which occurred when the patient was picked up on a mental health warrant. The district court denied the defendants' motions to dismiss, finding that the action was timely and that the patient stated a claim under ADA. The patient claimed he was held for a time in a padded cell, was handcuffed and shackled, was not given proper treatment or a hearing, and was not allowed to use a bathroom, change clothes or eat without handcuffs. The court found that the inmate was unable to communicate with his family, was unable to attend to his personal hygiene, and was isolated and segregated in a manner that the ADA was designed to prevent. (Monongalia County Sheriff's Department)

U.S. District Court
ADA-Americans with Disabilities Act
MEDICAL CARE

Saunders v. Horn, 959 F.Supp. 689 (E.D.Pa. 1996). An inmate brought a § 1983 action against corrections officials. The court found that a Commissioner's and superintendent's actions of ignoring the fact that the inmate's orthopedic shoes were taken from him and that failure to provide proper footwear caused him constant pain constituted deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment. The fact that a physician had prescribed orthopedic shoes for the inmate meant that he had a "serious medical need" for Eighth Amendment purposes. The court found that it was reasonable to infer that the Commissioner and superintendent acquiesced in the acts of their subordinates. The inmate's shoes and his brace had been taken from him the day he arrived at the facility, although he had been wearing them since 1984. The court also found that the inmate, who had a degenerative disk disorder in his spine, was disabled within the meaning of the Americans with Disabilities Act (ADA). The court held that the inmate's claim that the prison did not provide him with readily accessible bathroom and shower facilities was an appropriate claim under the ADA. (SCI-Graterford and SCI-Camphill, Pennsylvania)

U.S. District Court
SEARCH
DNA

Shelton v. Gudmanson, 934 F.Supp. 1048 (W.D.Wis. 1996). An inmate convicted of first-egree 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
HARASSMENT

Shiflet v. Cornell, 933 F.Supp. 1549 (M.D.Fla. 1996). A prisoner who suffered a stroke brought a civil rights action against prison officials alleging lack of treatment. The district court granted summary judgment for the defendants, finding that prison officials were not alleged to have been personally involved with the constitutional deprivations and therefore the prisoner could not recover from them. The prisoner had alleged that he was subjected to retaliation for filing the lawsuit, but the court ruled that the allegations constituted nothing more than a claim of verbal harassment which was not cognizable under the federal civil rights statute. (Desoto Correctional Institution, Florida)

U.S. Appeals Court
AIDS
CONDITIONS

Tokar v. Armontrout, 97 F.3d 1078 (8th Cir. 1996). A former inmate infected with the HIV virus brought a § 1983 action against former prison officials claiming that conditions in the segregation unit for HIV-positive inmates constituted cruel and unusual punishment and that his placement in the unit violated his right to privacy. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that the former inmate failed to show that the combination of broken windows and leaking roof in his housing unit caused a deprivation of an essential human need such as food, warmth or exercise; the inmate's cubicle did not have a window and the roof above his cubicle did not leak, and the inmate was able to use a blanket to stay warm before broken windows in the unit were repaired. The court also found that the inmate failed to establish that the alleged filthiness of toilet facilities in the housing unit violated the Eighth Amendment, noting that the inmate admitted that he had never asked for cleaning supplies. The appeals court held that the officials were entitled to qualified immunity with regard to the

inmate's claim for violation of his right to privacy. The court noted that the inmate did not have a clearly established right to nondisclosure of his HIV status at the time he was segregated. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
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
ADA-Americans with Disabilities Act
HANDICAP
RACIAL DISCRIMINATION

Williams v. One Female Corrections Officer Sgt. Kolaczyk, 940 F.Supp. 31 (D.Mass. 1996). An inmate sued a correctional officer and a jail infirmary alleging Eighth Amendment violations and violation of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the defendants did not show deliberate indifference to the inmate's medical needs. Although the inmate had a serious heart condition, the court found that he was provided with ample care at the infirmary, almost on a daily basis and frequently without his cooperation. The court dismissed the inmate's discrimination and ADA claims finding that the inmate failed to allege either that race or nationality was a motivating factor in the misconduct of the officer, or that he was discriminated against on the basis of any particular disability. (Worcester County Jail and House of Correction, Massachusetts)

U.S. Appeals Court
SEX DISCRIMINATION
SEXUAL HARASSMENT

Women Prisoners of D.C. Correct. v. D.C., 93 F.3d 910 (D.C. Cir. 1996). A class action suit was brought on behalf of female inmates in the custody of the District of Columbia and the district court entered a corrective order. The appeals court vacated in part and remanded, finding that the availability of fewer programs for female inmates did not violate equal protection. The appeals court found that female inmates were not similarly situated to male inmates, and thus the fact that female inmates were offered fewer programs than male inmates at another facility did not violate equal protection. The court noted that female inmates were housed in a smaller facility. The appeals court also found that the district court order setting a population cap was overbroad. The appeals court held that the district court's order impermissibly usurped the executive functions of the District of Columbia by providing that the court's special officer and her staff were to monitor allegations of sexual harassment at facilities in which female inmates were housed and were to ensure that each reported violation of policy was thoroughly investigated and documented. The district court had also provided that the warden was required to take action based on the monitor's report. (Lorton Minimum Security Annex, Correctional Treatment Facility, and Central Detention Facility, District of Columbia)

1997

U.S. District Court
SELF-INCRIMINATION

Amen-Ra v. Department of Defense, 961 F.Supp. 256 (D.Kan. 1997). Inmates confined at the U.S. Disciplinary Barracks brought a civil rights action against the Department of Defense (DOD) seeking release from confinement and injunctive relief. The district court held that the inmates lacked standing to challenge the conditions of confinement in a special housing unit and death row housing. The court found that the inmates were not entitled to new parole and clemency consideration based on an earlier court decision. According to the court, the adoption by DOD of a salient factor scoring analysis in setting release dates for inmates did not violate the ex post facto clause because while changing the method to be followed in setting release dates, it did not mandate a particular result that would necessarily lengthen an inmate's confinement. The court found that the inmates failed to establish denial of access to courts based on a broad complaint that they had difficulty obtaining access to a law library because the library's hours of operation conflicted with educational and recreational programs, where the inmates made no showing that they had been unable to pursue a claim because of the inability to obtain library materials. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)

U.S. District Court
RACIAL DISCRIMINATION

Astrada v. Howard, 979 F.Supp. 90 (D.Conn. 1997). After the plaintiff had burst into a police station, banged frantically on a desk window and brandished a smoking pistol, four individuals arrived at the station and claimed that the plaintiff fired his pistol at them. The plaintiff was held in a room in the station while police attempted to sort out the events. The plaintiff was eventually arrested and charged with reckless endangerment, but after a year

the charge was nolled. The plaintiff sued police officials under § 1981 and § 1983 claiming intentional infliction of emotional distress, false arrest and racial discrimination. The district court held that the plaintiff failed to show a causal link between race and the alleged discriminatory actions. The court found that detaining the plaintiff in an allegedly "scummy" room at the police station did not amount to arrest without a showing of probable cause because the detention was no more intrusive than was necessary. (West Haven Police Department, Connecticut)

U.S. Appeals Court
SEXUAL ABUSE
SEXUAL HARASSMENT
DISCIPLINE
USE OF 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
RELIGION

Combs v. Corrections Corp. of America, 977 F.Supp. 799 (W.D.La. 1997). Inmates brought a § 1983 action against the Louisiana Department of Corrections and the corporate operator of a correctional facility, arising from limitation of the inmates' participation in Native American Religion. The district court held that restricting the practice of Native American Religion to those prisoners who could demonstrate a Bureau of Indian Affairs (BIA) number or Native American ancestry violated the First Amendment free exercise clause because it effectively limited the inmates' freedom to believe. Although the inmates had claimed violations of the Religious Freedom and Restoration Act (RFRA), the American Indian Religious Freedom Act, and the Indian Civil Rights Act, the court found only a First Amendment violation, noting that RFRA had been found unenforceable under the U.S. Supreme Court decision in City of Boerne. The court noted that there was no dispute that the plaintiffs desired to practice Native American Religion but were denied because they could not prove their ethnicity to the satisfaction of prison officials. According to the court, the prison's policy "...offends the fundamental constitutional right to practice religion of one's choice." The court found the policy to be "...akin to a requirement that practicing Catholics prove an Italian ancestry, or that Muslims trace their roots to Mohammed." The court stressed that the free exercise clause embraces two concepts: the freedom to believe and the freedom to act. The court denied the inmates' request for money damages because there was no evidence presented that they suffered any actual injuries. (Winn Correctional Center, Winnfield, Louisiana, operated for the Louisiana Department of Corrections by the Corrections Corporation of America)

U.S. Appeals Court
ADA-Americans with Disabilities Act
HANDICAP

Crawford v. Indiana Dept. of Corrections, 115 F.3d 481 (7th Cir. 1997). A former state prisoner sued the Indiana Department of Corrections alleging violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the suit on the ground that the Act is inapplicable to prison inmates and the prisoner appealed. The appeals court reversed and remanded, finding that the Americans with Disabilities Act applies to state prisoners. The court stated that although incarceration itself is hardly a "program" or "activity" to which a disabled person might wish access, there is no doubt that an educational program is a program and when it is provided by and in a state prison it is a "program" within the meaning of the ADA. The court also held that the use of a state prison library and dining hall are "activities" under ADA, conferring rights on qualified disabled individuals. The State had conceded that ADA applied to a prison's relations with its employees and visitors, as well as to public schools. According to the court, ADA was cast in terms of eliminating a form of discrimination that Congress considered unfair, not in terms of subsidizing an interest group. The court decision did not discuss the Rehabilitation Act separately because it found it to be "materially identical to and the model for the ADA." (Indiana Department of Corrections)

U.S. Appeals Court
HABEAS CORPUS

Delancy v. Crabtree, 131 F.3d 780 (9th Cir. 1997). A federal prisoner filed a petition for a writ of habeas corpus alleging that he was wrongfully denied a sentence reduction by the Federal Bureau of Prisons and the Parole Commission. The sentence reduction was provided for under the Violent Crime Control and Law Enforcement Act of 1994 for completion of a drug abuse program, but the prisoner's primary offense occurred before the effective date of the Sentence Reform Act of 1984. The district court found that the prisoner was not eligible for the sentence reduction. (Federal Bureau of Prisons, Federal Parole Commission)

U.S. District Court
RACIAL DISCRIM.
MEDICAL CARE

De La Paz v. Peters, 959 F.Supp. 909 (N.D.Ill. 1997). An incontinent prisoner brought a § 1983 action against corrections officials alleging they were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment by refusing him daily showers. The prisoner also alleged that denial of his request to transfer to an honor dorm that had more showers was the product of racial discrimination in violation of equal protection. The court granted summary judgment in favor of the officials, finding that although the prisoner's incontinence was a serious medical condition, the officials did not display deliberate indifference to his condition because they had made special provisions for him, including permission to shower more frequently than other inmates. Because the law was not clearly established that an incontinent inmate was entitled to daily showers, the court found that the officials were entitled to qualified immunity. The court also held that the Indian-American/Mexican-American prisoner failed to establish that denial of his request to transfer to an honor farm was motivated by racial discrimination; the mere fact that there were very few Mexican-American inmates in the honor dorm was insufficient to establish racial discrimination. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
SEXUAL ABUSE

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

U.S. District Court
SEXUAL ABUSE

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
HARASSMENT

Freeman v. Arpaio, 125 F.3d 732 (9th Cir. 1997). A state inmate who was a practicing Muslim brought a § 1983 action against prison officials alleging violation of his right to free exercise of religion and discrimination based on his faith. The district court granted summary judgment in favor of the officials. The appeals court affirmed in part and reversed and remanded in part. The appeals court found that genuine issues existed as to whether the inmate and other Muslim inmates were prevented from attending Jumah services in violation of the free exercise clause. The court also found that officials may have violated the inmate's equal protection rights by allegedly refusing to let him attend religious services and by shackling Muslim inmates on their way to religious services. However, the court did not find free exercise or equal protection violations in connection with allegations that officials failed to give Muslim inmates 10-15 minute notice prior to services, by requiring them to sign attendance sheets at services, or by verbally abusing them. According to the court, verbal harassment or abuse is not sufficient to state a claim under § 1983, but abusive language directed at an inmate's religion may be evidence that prison officials acted in an intentionally discriminatory manner. (Maricopa County Jail, Arizona)

U.S. District Court
RACIAL DISCRIM.
MEDICAL CARE
FAILURE TO PROTECT

Franklin v. District of Columbia, 960 F.Supp. 394 (D.D.C. 1997). A class of Hispanic prisoners who were or would be incarcerated in correctional institutions operated by the District of Columbia sought injunctive and declaratory relief for alleged violations of the First, Fifth, and Eighth Amendments under § 1983. The district court held that the District's failure to provide qualified interpreters for Hispanic prisoners' medical and mental

health needs rose to the level of deliberate indifference and violated the Eighth Amendment. The court found no valid penological justification for disclosing a prisoner's medical condition by using correctional officers or other inmates as interpreters in medical encounters. The court noted that to satisfy the Eighth Amendment, a medical facility must be adequately staffed and access to medical services cannot be delayed in a systematic manner due to inadequate staffing. The court found that the District's failure to provide Hispanic prisoners with qualified interpreters at disciplinary proceedings and parole hearings was an affront to due process. However, the court held that while the District did not offer the same programs in Spanish as they offered in English, these programming decisions did not constitute denial of equal protection under the Fifth Amendment, noting that Hispanic prisoners were not barred from participation in prison programs because of their race or national origin. (District of Columbia)

U.S. Appeals Court
SEXUAL HARASSMENT

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
HANDICAP
EQUAL PROTECTION
ADA-Amer. with Disabilities Act

Hansen v. Rimel, 104 F.3d 189 (8th Cir. 1997). A hearing-impaired inmate brought a civil rights action against corrections officials asserting violations of his equal protection and Fourteenth Amendment rights and of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The inmate appealed the district court's grant of summary judgment for the defendants for all claims except the equal protection claim. The appeals court reversed, finding that hearing-impaired inmates were not similarly situated to inmates without hearing impairments for the purposes of using the telephone, and therefore the warden did not violate the inmate's right to equal protection by failing to provide a special telephone for his disability. (Omaha Correctional Center, Nebraska)

U.S. District Court
HARASSMENT

Jones v. Bishop, 981 F.Supp. 290 (S.D.N.Y. 1997). An inmate filed a § 1983 action against corrections officers and officials alleging unconstitutional conditions of confinement. The district court held that the inmate failed to establish an Eighth Amendment claim regarding allegedly cold conditions in his cell, noting that the inmate indicated that other prisoners remedied the cold simply by wearing sweats or long-johns, and that the cold caused him only depression. The court disagreed with the inmate's allegation that supervisory officials had a wanton state of mind in leaving windows open, absent evidence that the inmate had communicated to officials that he was cold or that he required additional blankets. The court found that the inmate's claim that he was called names and otherwise taunted by a corrections officer did not state a claim under § 1983. The inmate claimed that he was called "super-rape-po" and "tree jumper" by the officer. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
SELF INCRIMINATION

McMorrow v. Little, 109 F.3d 432 (8th Cir. 1997). An inmate sued prison officials because they withheld parole, work release and less restrictive confinement from him because he refused to admit to his crime. The district court denied the officials' motions to dismiss on the grounds of qualified immunity and they appealed. The appeals court reversed and remanded, finding that the officials were entitled to qualified immunity even if the inmate's right was violated, because no court with jurisdiction over the state had held that their conduct was a violation at the time of the conduct, and other courts had ruled on the issue with mixed results. According to the court, prison officials may constitutionally deny benefits to a prisoner who, by invoking is privilege against self-incrimination, refuses to make statements necessary for his rehabilitation, as long as their denial is based on the prisoner's refusal to participate in his rehabilitation and not on his invocation of his privilege. (North Dakota State Penitentiary)

U.S. District Court
RIGHTS RETAINED

Powell v. Riveland, 991 F.Supp. 1249 (W.D.Wash. 1997). Prisoners brought a civil rights action alleging that the policy of a corrections department in restricting incoming mail that contained sexually explicit material violated their First Amendment rights. The district court granted summary judgment for the defendants, finding that the policy was facially valid and that the copies of magazines were appropriately restricted under the First Amendment. The court noted that prisoners still had access to incoming mail and even to "nude" mail, and that the introduction of sexually explicit materials into the prison environment could be harmful to other prisoners and prison staff. Each publication was personally reviewed by prison staff to determine if it fell under the Department of Correction's restriction policy. (Washington Department of Corrections)

U.S. District Court
ADA-Americans with Disabilities Act
DISCRIMINATION
HANDICAP

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
CUSTODY LEVEL

Thompson v. Gomez, 993 F.Supp. 749 (N.D.Cal. 1997). State officials filed a motion under the Prison Litigation Reform Act (PLRA) for termination of the prospective relief provisions of a consent decree governing certain conditions of confinement for condemned prisoners. The district court granted the motion, finding that the termination provision of PLRA applied retroactively to provisions of the consent decree that were phrased as grants of prospective declaratory relief, and that the termination provision of PLRA did not violate separation of powers principles. The court found that the provision of earplugs to condemned prisoners on a monthly basis cured Eighth Amendment violations resulting from prison noise levels. The court held that revisions to its program for the provision of legal materials to condemned prisoners cured any constitutional violation arising out of previously deficient access. According to the court, the prison's revisions to its program for classification of condemned prisoners according to security risk cured any constitutional violation arising out of a previous policy of segregating such prisoners. The court found that the unavailability of group religious services for condemned prisoners was not a current violation of a substantial federal right, where the prisoners had individual access to religious materials and counseling and the prison had agreed to create an area suitable for religious services. (San Quentin State Prison, California)

U.S. District Court
RELIGION

Washington v. Garcia, 977 F.Supp. 1067 (S.D.Cal. 1997). A Muslim inmate brought a § 1983 action against prison officials alleging violation of his right to free exercise because he was denied a special diet during the month of Ramadan. The district court denied summary judgment for the officials, finding that the inmate set forth sufficient evidence, including inmate appeal forms, to create a genuine issue of material fact as to whether supervisory prison officials deprived him of his right to practice his religion. (Centinela State Prison, California)

U.S. District Court
VERBAL HARASSMENT

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
SEXUAL HARASSMENT

Women Prisoners of Corrections v. Dist. of Columbia, 968 F.Supp. 744 (D.D.C. 1997) In an ongoing class action suit brought on behalf of female inmates in the District of Columbia, the District appealed a corrective order and its subsequent modification. The appeals court vacated in part and remanded. On remand, the district court held that the District would be required to adopt an order prohibiting sexual harassment involving employees and women prisoners, and to take appropriate steps to prevent and remedy sexual harassment committed by its employees. The court ordered the District to include a prohibition against unwelcome sexual activity directed at prisoners, invasions of women prisoners' privacy by male employees, and retaliation for reporting complaints of sexual harassment. (District of Columbia)

U.S. Appeals Court
ADA-Americans with Disabilities Act

Yeskey v. Com. of Pa. Dept. of Corrections, 118 F.3d 168 (3rd Cir. 1997). A state prison inmate who was denied admission to a boot camp program due to a history of hypertension brought an action alleging violation of the Americans with Disabilities Act (ADA). The district court dismissed the case and the inmate appealed. The appeals court reversed and remanded, finding that the ADA and Rehabilitation Act sections prohibiting the exclusion of disabled persons from government programs were applicable to state prison programs and that state prisoners can be qualified individuals entitled to protection under both acts. According to the appeals court decision, "...the question of applicability of the ADA to prisons is an important one, especially in light of the increased number of inmates, including many older, hearing-impaired, and HIV-positive inmates, in the nation's jails." (Motivational Boot Camp Program, Pennsylvania Department of Corrections)

1998

U.S. District Court
RACIAL DISCRIMINATION

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
HARASSMENT

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
SEXUAL HARASSMENT
CONDITIONS
EQUAL PROTECTION

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. Appeals Court
SEXUAL HARASSMENT

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

U.S. Appeals Court
SEXUAL ABUSE

Berryhill v. Schriro, 137 F.3d 1073 (8th Cir. 1998). An inmate brought a civil rights action against civilian prison maintenance employees alleging that the employees sexually assaulted him. The district court entered summary judgment for the employees and the appeals court affirmed. The appeals court held that the employees' conduct was not sexual assault as required to support the inmate's Eighth Amendment claim. The inmate alleged that the employees briefly touched his buttocks, but that this was not accompanied by any sexual comments or banter. The court also held that the inmate did not suffer any objectively serious injury, although the inmate had alleged that he was humiliated and paranoid after the incident and suffered from shortness of breath. The court noted that the inmate never sought medical attention and had a history of asthma attacks. (Missouri)

U.S. Appeals Court
HANDICAP
HYGIENE

Bradley v. Puckett, 157 F.3d 1022 (5th Cir. 1998). A prison inmate sued correctional officials under § 1983 alleging they failed to take steps to accommodate his physical disability, preventing him from showering during the time he was placed in close confinement. The district court dismissed the case, but the appeals court vacated the decision and remanded the case, finding that the inmate's complaints were sufficient to state a claim under the Cruel and Unusual Clause of the Eighth Amendment. The prisoner alleged that the officials knew that his disability prevented him from showering without assistance, and placed him in lock-down for two months without making any attempt to accommodate his disability, requiring him to go without bathing for two months, resulting in the development of a fungal infection. The inmate wore a leg brace which made it dangerous for him to shower without a shower chair. (Mississippi State Penitentiary)

U.S. Supreme Court
ADA-Americans with Disabilities Act
AIDS

Bragdon v. Abbott, 118 S.Ct. 2196 (1998). A patient who was infected with the human immunodeficiency virus (HIV) brought an action under the Americans with Disabilities Act (ADA) against a dentist who refused to treat her at his office. The U.S. Supreme Court held that HIV infection is a "disability" under the ADA, even when the infection has not yet progressed to the so-called symptomatic phase, as a physical impairment which substantially limits the major life activity of reproduction. The court also held that when assessing the risk associated with treating or accommodating a disabled person under ADA the risk assessment must be based on medical or other objective evidence, and not simply on a person's good-faith belief that a significant risk existed. (Maine)

U.S. Appeals Court
HANDICAP

Frost v. Agnos, 152 F.3d 1124 (9th Cir. 1998). A pretrial detainee brought a § 1983 suit against a sheriff, corrections officers and others alleging that he was subjected to unconstitutional conditions because of his disability. The district court entered judgment for the officers and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that, as a matter of first impression, denial of adequate handicapped-accessible shower facilities to the detainee who wore a leg cast and relied on crutches could support a § 1983 claim. The appeals court held that the detainee failed to establish a § 1983 due process claim based on alleged delays in the administration of his pain medication, treating his broken nose, and providing him with a replacement crutch. The court found that while the jail officials may have acted negligently, the detainee did not establish that they acted with deliberate indifference to his medical needs. (Madison Street Jail, Maricopa County, Arizona)

U.S. District Court
VERBAL HARASSMENT

Green v. Thoryk, 30 F.Supp.2d 862 (E.D.Pa. 1998). A prisoner brought an action against a guard under § 1983 alleging verbal abuse and failure to protect. The district court dismissed the action, finding that verbal threats without subsequent harm do not ordinarily rise to the level of a § 1983 deprivation. The court also found that even if the guard threw a bar of soap at the prisoner, or allowed another prisoner to throw it, the injury suffered by the plaintiff did not rise to the level of an Eighth Amendment violation. (State Corr. Institution, Frackville, Penn.)

U.S. District Court
SEXUAL ABUSE
TRANSFERS

Gwynn v. Transcor America, Inc., 26 F.Supp.2d 1256 (D.Colo. 1998). A former prisoner who had been transported from Oregon to Colorado by employees of a Tennessee corporation which contracted with the Colorado Department of Corrections to transport prisoners

to other states, sued the corporation under § 1983 alleging that she had been sexually assaulted and otherwise endangered during the trip. The district court held that the corporation and its employees, who were nonresidents of Colorado, were subject to personal jurisdiction in Colorado. The court found that the prisoner stated a § 1983 claim by alleging that she had been sexually assaulted by one employee and that another employee failed to stop the assaults. The court found that the employees were acting as agents and prison guards of the State of Colorado, and used state power as a coercive force to further their wrongful acts. (Colorado Dept. of Corrections)

U.S. District Court
ADA-Americans with Disabilities Act
HANDICAP
PRETRIAL DETAINEES

Hanson v. Sangamon County Sheriff's Dept., 991 F.Supp. 1059 (C.D.Ill. 1998). An arrestee who was deaf alleged failure to provide him with an adequate means of communication in his suit against a county, a sheriff and a sheriff's department. The district court held that the arrestee stated a claim under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and that he stated a § 1983 claim against the sheriff. The arrestee alleged that he was denied, due to his disability, the opportunity to post bond and make a telephone call when the department failed to provide, despite his repeated requests, alternatives to a conventional telephone such as an interpreter or a text telephone device (TTD). The arrestee alleged that the sheriff maintained an express policy of forbidding officers from allowing deaf arrestees to use a TTD which was stored in an office. The court denied qualified immunity for the sheriff, noting that while there may have been a lack of caselaw directly on the point, the ADA and Rehabilitation Act had been enacted several years prior to the arrest, and at least two Courts of Appeal had held that the Rehabilitation Act was applicable to prisons and prisoners. The plaintiff was arrested and informed officers that he was deaf. The officers did not attempt to communicate with him, but rather placed him in a police van with eight to ten other arrestees and transported him to a local jail. Throughout the night the arrestee attempted to notify the officers of his need for alternative assistance in contacting his friends and/or relatives, to no avail. He was eventually assisted in making a telephone call by an officer and made arrangements to be released on bail, several hours after all of the others who were arrested at the same time had been released. (Sangamon County Jail, Illinois)

U.S. District Court
SEXUAL HARASSMENT

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. 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
SEXUAL HARASSMENT
VERBAL HARASSMENT

Jones v. Culinary Manager II, 30 F.Supp.2d 491 (E.D.Pa. 1998). A state prisoner brought a § 1983 action against a prison guard and prison officials. The district court granted summary judgment for the defendants, finding that the prisoner's allegations were insufficient to state a claim for sexual harassment under the Eighth Amendment, given that both men involved with the incident were fully clothed and the incident lasted only 15 to 20 seconds. The prisoner alleged that a prison guard pinned him against some boxes and "started grinding" on his buttocks with his penis and threatened that he was going to have sex with him the first chance he got. The court also held that verbal harassment of a prisoner, without appreciable injury, is generally insufficient to sustain a claim under § 1983. (State Correctional Inst., Graterford, Pennsylvania)

U.S. District Court
EXECUTION

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. District Court
SELF INCRIM-
INATION

Lile v. McKune, 24 F.Supp.2d 1152 (D.Kan. 1998). A prisoner challenged the constitutionality of a prison's sex offender treatment program that required a complete and written disclosure of a prisoner's sexual history, including all uncharged sex offenses, and that used polygraph examinations and penile plethysmograph testing. The district court held that the program violated the Fifth Amendment's privilege against self-incrimination but that immunity protected the prisoner's incriminating program disclosures from being used against him in later criminal proceedings. The court found that use of the penile plethysmograph testing did not violate a prisoner's Fourth Amendment privacy rights. Although such testing arguably involved the most private part of a prisoner's body, the court held that use of the testing did not violate the Fourth Amendment because the governmental interest in rehabilitation outweighed the prisoner's right to be free from such an intrusive testing procedure. The court noted that the sexual abuse treatment program (SATP) imposed significant and adverse consequences to a prisoner's classification, housing and privileges if he refused to participate in the required programming, and therefore the SATP operated to compel the disclosure of incriminating testimony in violation of a prisoner's Fifth Amendment rights. (Lansing Correctional Facility, Kansas)

U.S. District Court
RACIAL DISCRIM-
INATION
PAROLE

Lum v. Penarosa, 2 F.Supp.2d 1291 (D.Hawai'i 1998). A prisoner petitioned for habeas corpus relief, alleging he was denied parole because of his race. The district court denied the petition, finding that the prisoner failed to establish that he was subjected to racial discrimination, and that he failed to exhaust his administrative remedies. (Halawa Correctional Facility, Hawai'i)

U.S. District Court
AIDS

McNally v. Prison Health Services, Inc., 28 F.Supp.2d 671 (D.Me. 1998). A pretrial detainee sued a county jail and its private health care provider alleging that his constitutional rights and his rights under the Americans with Disabilities Act (ADA) were violated by the denial of his human immuno-deficiency virus (HIV) medication. The district court denied the defendants' motion to dismiss, holding that the plaintiff had sufficiently plead a § 1983 claim that the defendants were deliberately indifferent to his serious medical needs. The court found that the detainee suffered significant harm from the jail's failure to provide care, noting that he suffered from fevers, night sweats, and infections from cuts received from his arresting officers. The detainee was arrested by a local police department and was injured by the arresting officers, suffering blackened eyes and cuts on his nose. The local police took him to a hospital for treatment before taking him to the county jail. Upon admission to the jail, the detainee told employees of the private health care provider that he had been diagnosed with HIV and was on a strict regime of medication. He identified the medication and the dosage, and told medical personnel that he had missed a dosage due to his arrest and needed one at that time. Although the detainee's private physician confirmed his medication and dosage, he was denied his medication throughout his three-day stay at the jail. He was hospitalized immediately after his release for several days as the result of being deprived of his medication. (Cumberland County Jail, Maine, and Prison Health Services, Inc.)

U.S. District Court
RACIAL DISCRIM.
MEDICAL CARE

McNeil v. Redman, 21 F.Supp.2d 884 (C.D.Ill. 1998). A prisoner brought a § 1983 action against a director of nursing, alleging that she denied him access to medical care based on his race. The district court granted summary judgment in favor of the defendant, finding that the director's refusal to refer the prisoner to a doctor without first performing tests was not deliberate indifference to the prisoner's serious medical needs. The prisoner had come to the prison clinic with high blood pressure and complaining of kidney problems, but he appeared to be in no acute distress, his breathing and pulse were normal, and the prisoner "stormed out" of the clinic without submitting to tests that the nursing director thought were in order. (Danville Correctional Facility, Illinois)

U.S. Supreme Court
ADA-Americans with
Disabilities Act
HANDICAP

Pennsylvania Dept. of Corrections v. Yeskey, 118 S.Ct. 1952 (1998). A state prison inmate who was denied admission to a prison boot camp program due to his history of hypertension sued corrections officials under the Americans with Disabilities Act (ADA). The U.S. Supreme Court held that Title II of the ADA, prohibiting a "public entity" from discriminating against a "qualified individual with a disability" applied to inmates in state prisons. In a unanimous decision the Court stated that the text of ADA was not ambiguous and it unmistakably included state prisons and prisoners in its coverage. (Penn. Dept. Of Corrections)

U.S. District Court
ADA-Americans with
Disabilities Act
HANDICAP

Rouse v. Plantier, 997 F.Supp. 575 (D.N.J. 1998). Diabetic inmates brought a § 1983 action against state corrections officials alleging violation of the Eighth Amendment and the Americans with Disabilities Act (ADA). The court denied summary judgment for the defendants on the issue of whether the inmates' diabetes was a disability under ADA. According to the court, the inmates might be substantially limited in the foods they could eat, in the exercise regime in which they could engage and by numerous special complications diabetes presented for them. If the inmates' condition was considered without mitigating measures such as medicines, or assistive or prosthetic devices, the court found it was clear that they could be considered disabled. (Adult Treatment and Diagnostic Center, New Jersey)

U.S. Appeals Court
HANDICAP

Simmons v. Cook, 154 F.3d 805 (8th Cir. 1998). Paraplegic inmates brought a § 1983 suit challenging their placement in solitary confinement. The district court ruled in favor of the inmates and the appeals court affirmed. The appeals court held that the inmates' Eighth Amendment rights were violated and that damage awards of $2,000 for each inmate for their 32-hour period of solitary confinement were not excessive . The court found that corrections officials violated the inmates' rights because the inmates did not receive adequate food or medical care while in solitary confinement. The inmates' wheelchairs did not fit through the solitary confinement cell doors, so they were lifted onto their beds and their wheelchairs were folded and then reopened inside their cells. Because their wheelchairs could not pass their cell bunks to reach the barred door where food trays were set, the inmates missed four consecutive meals. The inmates were unable to use a toilet during their 32-hours in solitary confinement because the facilities were not accessible and no assistance was provided. (Arkansas Department of Corrections, Diagnostic Unit)

U.S. Appeals Court
HANDICAP

Tesch v. County of Green Lake, 157 F.3d 465 (7th Cir. 1998). An arrestee who was wheelchair-bound brought a § 1983 action against officials, alleging violation of his constitutional rights during his arrest and detention. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the disabled detainee's inability to put on his jail-issued pants, obtain drinking water from his cell sink, and get into the bed in his cell, during 44 hours of detention, were insufficiently severe to amount to punishment in violation of the detainee's substantive due process rights. According to the court, the detainee was not deprived of any of his basic necessities, but rather did not receive the level of comfort he had demanded. The court noted that correctional officials are not required to provide comfortable jails, even for pretrial detainees. The detainee suffered from muscular dystrophy and was confined to a wheelchair, but was physically unable to function fully in a jail cell that was equipped for handicapped inmates. (Green Lake County Jail, Wisconsin)

U.S. District Court
VERBAL HARASS-
MENT

Warburton v. Goord, 14 F.Supp.2d 289 (W.D.N.Y. 1998). An inmate sued corrections officials alleging violation of his rights with regard to verbal abuse and the search of his legal materials. The district court dismissed the case, finding that the inmate's claim that he was verbally abused, taunted and threatened by prison officers was not actionable under § 1983 absent some physical injury. The court also found that prison officers' search of the inmate's law library desk, memory typewriter, and crate of legal materials, without more, was not a violation of the inmate's limited right to privacy. (Groveland Correctional Facility, New York)

U.S. District Court
CONDITIONS
DISCIPLINE
FAILURE TO
PROTECT

White v. Fauver, 19 F.Supp.2d 305 (D.N.J. 1998). Inmates filed a class action civil rights suit alleging that prison officials and guards engaged in a pattern of physical abuse and threats, and subjected inmates to a series of unconstitutional living conditions, in retaliation for the murder of a prison guard. The district court held that the inmates were not required to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA) because the PLRA term "prison conditions" does not encompass intentional physical attacks, conspiracy to use excessive force to intimidate inmates, threats of further physical violence to conceal prior attacks, alleged false disciplinary charges and retaliation for filing suit, or claims for compensatory and punitive damages where monetary relief was not available under the state's inmate grievance procedure. But the court held that allegations of mere threats do not state a civil rights claim, and that prison officials were entitled to qualified immunity with respect to allegations of unconstitutional prison conditions. (Bayside State Correctional Facility, New Jersey)

U.S. District Court
DISCRIMINATION
RACIAL DISCRIMIN.

Wong v. Warden, FCI Raybrook, 999 F.Supp. 287 (N.D.N.Y. 1998). An alien prisoner of Chinese ancestry who was serving sentences for conspiracy to distribute heroin filed a habeas corpus petition claiming that the U.S. Department of Justice denied his request for a transfer to his country of citizenship (Canada) based on his race, or in retaliation for refusing to cooperate with law enforcement. The district court concluded that the Administrative Procedure Act did not preclude judicial review of the Justice Department's decision to deny an alien prisoner's request for transfer, but the petition was denied. The court found that statistical evidence concerning disposition of transfer requests did not give rise to an inference of discrimination based on Oriental race and/or national origin area. (Federal Correctional Institution at Ray Brook, New York)

1999

U.S. District Court
HANDICAP
ADA-Americans with
Disabilities Act

Beckford v. Irvin, 49 F.Supp.2d 170 (W.D.N.Y. 1999). Defendants moved to set aside a jury verdict and dismiss an inmate's case against them. The district court denied the motions, finding that the award of compensatory and punitive damages was not excessive. The inmate had been confined to a wheelchair since 1984. In 1994 he was transferred from a psychiatric center to another correctional facility where he was assigned to a Mental Health Observation Unit (MHU). The court noted that the inmate was "...not placed in MHU for mental health treatment. He was placed in MHU because the cell was bigger and because his wheelchair fit in the cell." But shortly after his transfer officials took away his wheelchair and denied him

access to it for the majority of his time at the facility. The inmate repeatedly requested permission to use his wheelchair and his requests were denied. The jury concluded that the inmate's rights had been violated because he was unable to participate in outdoor exercise or to take a shower because he was not allowed to use his wheelchair. The jury awarded $125,000 in compensatory damages for violations of the Americans with Disabilities Act (ADA) and punitive damages totaling $25,000 against two supervisory officials for being deliberately indifferent to the inmate's serious medical needs. The court noted that the fact that the jury did not assess liability on the part of lower ranking prison officials did not preclude the jury from assessing liability on the supervisory officials. (Wende Correctional Facility, New York)

U.S. District Court
VERBAL HARASS.
RELIGION
MEDICAL CARE
RACIAL DISCRIM.

Buckley v. Gomez, 36 F.Supp.2d 1216 (S.D.Cal. 1997). An inmate who was an African-American Hebrew brought a § 1983 action against corrections officials and staff. The district court held that prison staff were not deliberately indifferent to the inmate's medical needs for medical treatment of his injured thumb even though there may have been a delay in treatment, since the delay did not cause substantial harm and the inmate was able to see a medical technician the same date of the injury. The district court held that a prison guard's negligent or intentional failure to follow proper mail procedures was insufficient to constitute a violation of the Due Process Clause of the Fourteenth Amendment. The inmate had alleged that a guard had called him inappropriate names and dropped his mail to the floor and kicked it under the inmate's cell door. Although the court concluded that name-calling alone was not enough to raise a cognizable claim, the court denied summary judgment for the guards. The court found materials issues of fact to be resolved as to whether the treatment the prisoner received was invidiously dissimilar to that received by other non-African-American or non-Jewish inmates.(California Department of Corrections)

U.S. District Court
SEXUAL ABUSE

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. District Court
SEXUAL ABUSE

Carrigan v. Davis, 70 F.Supp.2d 448 (D.Del. 1999). A female prison inmate brought a § 1983 action against a former correction officer alleging he sexually assaulted her. After a jury trial the district court entered judgment for the inmate as a matter of law, finding that sexual intercourse between the officer and the inmate constituted a per se violation of the inmate's Eighth Amendment rights because such conduct violated contemporary standards of decency. The court also held that the officer could not establish a defense of consent because the inmate was incapable of voluntarily waiving her rights, given her circumstances as a prisoner. The officer had admitted that he had sexual intercourse with the inmate but had argued that the act was consensual. (Women's Correctional Institute, Delaware)

U.S. District Court
HANDICAP
REHABILITATION ACT
ADA-Americans with Disability Act

Cassidy v. Indiana Dept. of Correction, 59 F.Supp.2d 787 (S.D.Ind. 1999). A blind inmate brought an action against a state corrections department alleging violations of the 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
SLAVERY
PRETRIAL DETAINEES

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
CUSTODY LEVEL
TRANSFER
GOOD TIME

Frazier v. Hesson, 40 F.Supp.2d 957 (W.D.Tenn. 1999). An inmate challenged prison discipline practices in a habeas corpus petition. The district court dismissed the petition, finding that the inmate's due process rights were not violated when he was accused of a disciplinary offense and confined in involuntary administrative segregation and transferred to a maximum security prison. The court held that reclassification and transfer to a maximum security facility and confinement in administrative segregation did not deprive the inmate of any due process liberty interests, even if the assignment to administrative segregation affected his ability to earn sentencing credits. The court noted that a state law that requires a due process hearing prior to extensions in an inmate's release eligibility date was merely a state law procedural requirement and did not create a liberty interest protected by the Due Process clause. (West Tennessee State Prison)

U.S. District Court
SEXUAL HARASS.

Garcia v. District of Columbia, 56 F.Supp.2d 1 (D.D.C. 1998). Prisoners filed a § 1983 action alleging that corrections officials retaliated against them for filing grievances against a correctional officer. The court refused to dismiss the case against the correctional officer and her supervisor finding that the prisoners' First Amendment claims were not barred by qualified immunity. The prisoners alleged that the correctional officer began writing fraudulent disciplinary reports against them after they filed their grievances. The court found that the prisoners stated a claim when they alleged that he ignored their allegations of sexual harassment against a subordinate, threatened another prisoner with punitive segregation if he was found to be assisting another prisoner in writing grievances, and ordered prison officials to specifically target the prisoners during a mass shakedown of a housing unit. One prisoner alleged that the female correctional officer propositioned him to enter into a sexual relationship with her and when he refused she began retaliating against him. The prisoner alleged that the female officer would wake him at 3:30 in the morning and order him to dress and report to the control center. (Lorton Medium Security Facility, Virginia, District of Columbia Department of Corrections)

U.S. District Court
SEX DISCRIMINATION
EQUAL PROTECTION

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

U.S. District Court
HANDICAP
ALIENS
ADA-Americans with Disabilities Act

Hurtado v. Reno, 34 F.Supp.2d 1261 (D.Colo. 1999). A deaf alien who was being held at an Immigration and Naturalization Service (INS) detention facility awaiting deportation sued officials alleging due process violations and violations of the Americans with Disabilities Act (ADA) and Rehabilitation Act of 1973. The district court dismissed the action, finding that the alien had not right of action under ADA nor under the Rehabilitation Act. The court found that the privately-operated detention facility did not fall under the ADA's definition of a "public entity." (Wackenhut Correctional Corporation, United States Immigration and Naturalization Detention Facility, Colorado)

U.S. District Court
CUSTODY LEVEL
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 of the Eighth Amendment. (United States Penitentiary, Beaumont, Texas)

U.S. Appeals Court
SEXUAL ABUSE

Liner v. Goord, 196 F.3d 132 (2nd Cir. 1999). A prisoner brought a § 1983 action against prison officials alleging he was sexually assaulted on three separate occasions by correctional officers. The district court dismissed the complaint and the prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the alleged policy or practice

of the Commissioner of the Department of Correctional Services that permitted corrections officers to conduct intrusive body searches without "therapeutic supervision" supported a § 1983 claim, even if the emotional distress claim required a showing of prior injury because the alleged sexual assaults qualified as more than de minimis physical injuries. The appeals court held that although the Prison Litigation Reform Act (PLRA) restricts an inmate's right to sue for emotional distress, "the law concerning the PLRA's exhaustion requirement is in great flux." (Attica Correctional Facility, New York)

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. District Court
RACIAL DISCRIM.
CLASSIFICATION

Mason v. Schriro, 45 F.Supp.2d 709 (W.D.Mo. 1999). A prisoner sued prison authorities claiming that the practice of considering race in making temporary housing assignments violated his equal protection rights. The district court found that several state prison officials, including the Director of the state Department of Corrections, were subject to suit. The court ruled that the prisoner did not have to allege intentional discrimination. The court found that the prison did not show disciplinary or security justifications for the policy. According to the court, the policy was based on the "bare conclusion" that persons of the same race were more apt to be collegial, which was unsupported by any history of racial trouble. (Fulton Reception and Diagnostic Center, Missouri)

U.S. District Court
RACIAL DISCRIM.
EQUAL PROTECTION
RELIGION

Mitchell v. Angelone, 82 F.Supp.2d 485 (E.D.Va. 1999). A non-Native American inmate sued corrections officials challenging the validity of a policy that prevented him from obtaining Native American spiritual items. The district court found that the raced-based policy violated the Equal Protection Clause and ordered an injunction preventing its application. The items requested by the inmate were abalone shells and herbs. The policy allowed Native American inmates to obtain such items by receiving an exemption from the property restrictions, which the court found to be solely based on race and did not address whether non-Native Americans had a sincere faith. The inmate was a member of a group called H.E.A.R.T. (Heritage Examined Around Redman Traditions.) But the court found that the inmate failed to prove that the policy violated his First Amendment rights because there was no evidence of the inmate's beliefs or that he sincerely held religious tenets. (Greensville Correctional Center, Virginia)

U.S. District Court
HANDICAP
ADA-Americans with Disabilities Act

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

U.S. Appeals Court
EXECUTION
42. U.S.C.A. Sec. 1983

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. Appeals Court
ADA-Americans with Disabilities Act
DISCRIMINATION

Murdock v. Washington, 193 F.3d 510 (7th Cir. 1999) U.S. cert. den. at 120 S.Ct. 2015. An inmate sued prison officials alleging violation of the Americans with Disabilities Act (ADA) and denial of due process as the result of their refusal to allow him to participate in a prison culinary arts program because he refused to submit to an HIV test. The district court dismissed the action and the appeals court affirmed. According to the appeals court, the ADA section that limited medical testing for disabilities applies to discrimination in employment, not to prisons. The prison had a policy that required any inmate who wished to participate in the vocational program to submit to an HIV test. (Taylor Correctional Center, Illinois)

U.S. District Court
SEXUAL HARASS.

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
AIDS

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. District Court
SEXUAL ABUSE

Peddle v. Sawyer, 64 F.Supp.2d 12 (D.Conn. 1999). An inmate sued prison officials alleging sexual abuse by a correctional officer. The district court held that the complaint stated a claim, under the theory of supervisory liability, for violation of the Violence Against Women Act (VAWA). The female inmate alleged that prison officials assigned a male officer, whom they knew or should have known had a history of sexual misconduct, to posts where he had unsupervised contact with female inmates. According to the court, severe and repetitive sexual abuse of an inmate by a prison officer is not part of the penalty that criminal offenders pay for their offenses. (Federal Correctional Institution, Danbury, Connecticut)

U.S. Appeals Court
RACIAL DISCRIM.

Powells v. Minnehaha County Sheriff Dept., 198 F.3d 711 (8th Cir. 1999). A Black jail inmate filed separate actions under § 1983 alleging violations of his constitutional rights. The district court dismissed all five actions and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the Black inmate stated an equal protection claim based on allegations that he and his white cellmate, who followed the same procedures in requesting an extra mattress and extra blanket, were similarly situated but that a defendant officer, for racial reasons, denied the Black inmate's request for the items but granted the white inmate's request. The appeals court also held that the inmate stated a constitutional claim by alleging that officers opened his "legal mail" when he was not present. (Minnehaha County Jail, South Dakota)

U.S. District Court
EQUAL PROTECTION

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
ADA-Americans with Disabilities Act
HANDICAP

Randolph v. Rodgers, 170 F.3d 850 (8th Cir. 1999). A hearing impaired inmate sued corrections officials alleging violation of his rights because he was not provided with a sign language interpreter. The district court granted the inmate's motion for summary judgment, finding liability under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and a state statute, and issued a permanent injunction. The appeals court vacated the judgment with regard to enforcement of the state statute, finding that the Eleventh Amendment barred enforcement. The appeals court reversed and remanded in part, finding that the inmate established a prima facie case regarding federal violations but that issues of fact precluded summary judgment. The court noted that there was substantial evidence that providing a sign language interpreter created safety and security issues and placed a financial burden on the prison. The appeals court held that although the inmate had been provided with some form of medical care and educational training, and was able to participate in disciplinary and

classification proceedings, he had not received the full benefits solely because of his disability. (Jefferson City Correctional Center, Missouri)

U.S. District Court
CRIPA-Civil Rights of Institut. Persons Act

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
ADA-Americans with Disabilities Act
AIDS

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. The court held that evidence raised an issue of material fact as to whether the inmate's medical condition required that he be treated differently from other inmates in the jail, in violation of ADA. The inmate had informed jailers that he was HIV-positive upon his arrival at the jail and he was given an initial medical assessment. According to the inmate, he was told that because of "your medical condition, and you having AIDS, you're going to be locked down." 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 violatzion. 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)

U.S. Appeals Court
RACIAL DISCRIM.
RELIGION
TRANSFERS

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 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
ADA-Americans with Disabilities Act
HANDICAP
CONDITIONS
CROWDING

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 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. District Court
VERBAL HARASSMENT

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. 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. District Court
RACIAL DISCRIMINATION
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. District Court
HARASSMENT
TRANSFERS
CONDITIONS
ACCESS TO COURT

Thaddeus-X v. Blatter, 175 F.3d 378 (6th Cir. 1999). State inmates brought a § 1983 suit against corrections officers. The federal district court granted summary judgment for the officers and the inmates appealed. The appeals court affirmed in part, vacated in part, and remanded the case. The appeals court held that the officers were the proper defendants to the retaliation claim and that the inmate who assisted a litigating inmate in filing an action was engaged in "protected conduct" for the purposes of the retaliation claim. The two inmates had signed a "Legal Assistance Request and Agreement" which was approved by an official prison policy. An officer allegedly told the inmate that he would have him moved to an area of the prison used to house mentally ill inmates because he assisted another inmate to file a suit. The court also found that a fact issue existed as to whether the alleged harassment and cold meals established the adverse action element of the inmate's retaliation claim, precluding summary judgment. The court also found that fact issues precluded summary judgment on the inmate's conditions of confinement claims. The inmate alleged that mentally ill prisoners threw human waste and urine at each other and at officers, making him afraid to leave his cell, that a foul odor was constant, that other prisoners flooded the gallery with water and banged their footlockers so loudly that he could not sleep, that the adjacent prisoner urinated through the door of his cell and refused to bathe or flush his toilet, and that this area of the prison was rarely cleaned. (State Prison of Southern Michigan)

U.S. District Court
SLAVERY

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
SEARCH
CORRESPONDENCE

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)

U.S. Appeals Court
USE OF FORCE
BRUTALITY

U.S. v. Walsh, 194 F.3d 37 (2nd Cir. 1999). A corrections officer who was convicted of violating an inmate's constitutional rights appealed his conviction on three counts of violating 18 U.S.C. § 42, which makes it a criminal act to willfully deprive a person of rights protected by the Constitution or laws of the United States while acting under the color of law. The appeals court affirmed, finding that the officer's acts constituted punishment and rose to the level of a constitutional violation. The corrections officer was found to have stepped on an inmate's penis and to have perpetrated other assaults on inmates. The officer, who was six feet two inches tall and weighed over 300 pounds, instructed an inmate to kneel and put his penis on a horizontal bar of his cell, and then stood with his full weight on the penis for a few seconds. The court concluded that the officer was acting under the color of state law, noting that the officer was "on duty and in full uniform, was acting within his authority to supervise and care for inmates under his watch when

the assaults occurred." (Orleans County Jail, New York)

U.S. District Court
ADA- Americans with Disabilities Act
DISCRIMINATION

Yeskey v. Pennsylvania, 76 F.Supp.2d 572 (M.D.Pa. 1999). A prisoner sued a state and prison officials alleging that their denial of his admission to a boot camp program, allegedly due to his high blood pressure, violated the Americans with Disabilities Act (ADA). The case was eventually considered by the United States Supreme Court which ruled that ADA applied to state prisons. The case was remanded to the district court which held that the individual defendants in the case could not be held liable for discrimination in furnishing public services. The district court also held that the prisoner failed to show that he was "disabled" as required to support an ADA claim. The court found that intense exercise, which was part of the boot camp program, was not a "major life activity" which was required to be accommodated under ADA. (Penn. Motivational Boot Camp Act)

2000

U.S. District Court
ALIENS
ACTA- Alien Tort Claims Act

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. District Court
MEDICAL CARE

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

U.S. Appeals Court
ADA- Americans with Disabilities Act
HANDICAP

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

U.S. District Court
SEX DISCRIM-INATION
REGULATIONS

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. Appeals Court
DISCIPLINE

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 Correctional Center, Illinois)

U.S. District Court
TRANSFERS
PRIVACY

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
SEXUAL ABUSE

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

U.S. District Court
MEDICAL CARE
ADA- Americans with Disabilities Act
AIDS

Hallett v. New York State Dept. of Correct. Serv., 109 F.Supp.2d 190 (S.D.N.Y. 2000). A former inmate brought an action against state correctional officials alleging he was denied access to special programs while incarcerated due to his status as an HIV-positive amputee, in violation of the Americans with Disabilities Act (ADA), the Rehabilitation Act and state laws. The district court dismissed the case in part. The court found that the Eleventh Amendment did not provide immunity for officials for alleged violations of ADA and the Rehabilitation Act. The court found that the inmate's allegations that he was denied entrance into a shock incarceration program and work release programs due to his disability supported claims for alleged violations of ADA and the Rehabilitation Act. The court held that the former inmate stated a § 1983 claim by alleging that officials failed to provide him with an adequate wheelchair for five months, despite receiving notification that the inmate was in pain and the inmate's grievances concerning confiscation of his personal wheelchair, along with allegations that the inmate suffered severe back pain and a cut to his ear as the result of the officials actions. The inmate successfully alleged the personal involvement of a prison superintendent and director. (Elmira Correctional Facility and Green Haven Correctional Center, New York)

U.S. Appeals Court
CLASSIFICATION
RACIAL DISCRIMIN.

Johnson v. State of Cal., 207 F.3d 650 (9th Cir. 2000). A state inmate brought a pro se action for damages and declaratory relief alleging violation of his rights because officials segregated inmates by race and extorted money from inmates by overcharging for telephone use. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the inmate's allegations supported his claim for racial discrimination in inmate housing decisions and that officials were aware of the deleterious effects of the practice and the practice persisted despite a court order to house inmates in a race-neutral manner. The appeals court affirmed the dismissal of the telephone charges allegation, holding that there was no authority for the proposition that inmates were entitled to a specific rate for telephone calls and that the facts alleged did not support the conclusion that the rate charged was so exorbitant as to deprive inmates of telephone access all together. (Calif. Dept. of Corrections)

U.S. District Court
ADA- Americans with Disabilities Act
HANDICAP

Kruger v. Jenne, 164 F.Supp.2d 1330 (S.D.Fla. 2000). A blind county jail inmate brought a § 1983 and Americans with Disability Act (ADA) suit against a sheriff and a private medical care company that contracted to provide medical care to inmates, alleging deprivation of necessary accommodations and failure to treat his medical needs. The district court held that the inmate stated a § 1983 Eighth Amendment claim against the company and an ADA claim against the sheriff in his official capacity, and allowed the inmate to maintain simultaneous ADA and § 1983 claims against the sheriff. The private medical company allegedly failed to accommodate the inmate's blindness with a cane or otherwise, despite advance notice of the need for one, and allegedly deliberately delayed or withheld needed treatment for injuries sustained in several falls, based on cost-savings policies, leading to unnecessary suffering. The sheriff allegedly failed to

have the inmate's cell fitted with hand rails or provide him with a cane, leading directly to the inmate's injuries when he suffered several falls. The inmate alleged that the sheriff carried out a policy of denying or delaying needed medical care for cost-savings reasons. (North Broward Detention Center, Florida, and EMSA Correctional Care)

U.S. Appeals Court
PAROLE
SELF-INCRIM-INATION

McCall v. Pataki, 232 F.3d 321 (2nd Cir. 2000). A state prisoner brought a pro se § 1983 action against state officials alleging that he was denied his constitutional rights during parole hearings. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prisoner was not entitled to warnings on the right against self-incrimination or to the assistance of counsel in a parole hearing. The court noted that even though the prisoner was convicted by a jury and did not plead guilty to his crime of conviction, he could not be prosecuted again for the same crime and had no right to refuse to answer with respect to that crime. (N.Y. Board of Parole)

U.S. Appeals Court
EXECUTION

Miller ex rel. Jones v. Stewart, 231 F.3d 1248 (9th Cir. 2000). An attorney with a county public defenders officer moved to proceed as next friend to stay the execution of a prisoner who had declined to seek federal habeas corpus relief and refused to be represented by an attorney in doing so. The district court denied the motion and dismissed the habeas petition, but issued a certificate of appealability. The attorney appealed and requested a stay of execution. The appeals court granted the stay and remanded the case to district court for an evidentiary hearing on the offender's competence to choose to die and the voluntariness of that decision. (Pima County Public Defenders Office, Arizona)

U.S. District Court
HANDICAP
ADA- Americans with Disabilities Act

Parkinson v. Goord, 116 F.Supp.2d 390 (W.D.N.Y. 2000). A prison inmate who was missing a leg sued prison officials claiming violation of his Eighth Amendment rights and violation of the Americans with Disabilities Act (ADA) arising out of their alleged failure to accommodate his disability. The district court entered judgment for the officials. The court found that the officials were not deliberately indifferent to the inmate's needs where they had made prompt arrangements to obtain a prosthesis, offered him accommodations on the same floor as the mess hall, and promptly processed his request to be housed in a more handicapped accessible area. (Collins Correctional Facility, New York)

U.S. District Court
PRIVACY

Paul P. v. Farmer, 80 F.Supp.2d 320 (D.N.J. 2000). A class action suit was brought by persons required to register under a sex offender notification law (Megan's Law). The appeals court held that the law did not violate the plaintiffs' constitutional rights to privacy and remanded the case for consideration of the procedures for notification. The district court held that state guidelines for distributing notices under the statute unreasonably infringed on the privacy rights of sex offenders and had to be redrafted to reasonably limit disclosure to those who were entitled to receive it. According to the court, there was evidence of widespread dispersal of the information to persons not authorized to receive it and that counties used inconsistent methods of distributing the notices. (New Jersey Registration and Community Nofification Act)

U.S. Appeals Court
SEXUAL ABUSE

Schwenk v. Hartford, 204 F.3d 1187 (9th Cir. 2000). A prisoner who was a pre-operative male to female transsexual sued a state prison officer and other prison officials under § 1983 and the Gender Motivated Violence Act (GMVA) alleging attempted rape by the officer. The district court denied the officer's motion for summary judgment and the appeals court affirmed in part and reversed in part. The appeals court held that GMVA applies with equal force to men and women and its protection extends to transsexuals. The appeals court found that evidence supported a finding of a gender-motivated attack but that the officer was entitled to qualified immunity because the law regarding gender motivation was not clearly established at the time of the assault. (Washington State Penitentiary in Walla Walla)

U.S. District Court
SELF-INCRIMINATION
PROGRAMS

Searcy v. Simmons, 97 F.Supp.2d 1055 (D.Kan. 2000). An inmate brought a § 1983 action against prison officials challenging reduction of his privileges following his refusal to participate in a sexual abuse treatment program. The district court granted summary judgment for the defendants. The court held that the inmate's refusal to reveal potentially incriminating information about his sexual history did not violate his right against self incrimination and that penile plethysmograph and polygraph examinations did not violate his substantive due process rights. The court noted that the program was voluntary and program requirements were reasonably related to valid penological interests in rehabilitating sex offenders. The court also found that the inmate was not deprived of procedural due process when prison officials removed his personal property after he was denied privileges and shipped it to his relatives without a pre-deprivation hearing, where the inmate was provided with the opportunity to specify where to send the property but refused to do so. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
CLASSIFICATION
RACIAL DISCRIM.

Simpson v. Horn, 80 F.Supp.2d 477 (E.D.Pa. 2000). An inmate brought a § 1983 action against state corrections officials challenging conditions of confinement at a crowded prison. The district court denied summary judgment for the officials on the inmate's claim that the practice of assigning inmates to cells based on their race violated his equal protection rights. The district court found that summary judgment was precluded by material issues of fact as to whether race was only one factor in determining dual cell assignments and whether the officials intended to

discriminate by segregating cells by race. (SCI-Graterford, Pennsylvania)

U.S. District Court
HANDICAP
ADA- Americans with Disabilities Act

Spurlock v. Simmons, 88 F.Supp.2d 1189 (D.Kan. 2000). A deaf and mute inmate brought an action against prison officials alleging violation of his civil rights. The district court granted summary judgment in favor of the defendants, finding no due process or Americans with Disabilities Act (ADA) violations. The court held that requiring the deaf inmate, who had to use a special telecommunications device for the deaf (TDD) in a separate office, was not a significant hardship in violation of the Eighth Amendment. The court also held that the inmate had meaningful access to prison activities without the provision of an interpreter. According to the court, there was no evidence that the deaf inmate's request for unlimited telephone use--comparable to that of his hearing counterparts--could not reasonably be accommodated by the prison. (Lansing Correctional Facility, Kansas)

U.S. District Court
EXERCISE

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)

U.S. Appeals Court
EQUAL PROTECTION
DISCRIMINATION

Yates v. Stalder, 217 F.3d 332 (5th Cir. 2000). Three male state prisoners brought a § 1983 action against the secretary of a state corrections department alleging they were discriminated against based on their gender because living conditions for male inmates were significantly harsher than those provided for female inmates. The district court dismissed the case and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that the issue of whether the state violated the Equal Protection Clause by treating female prisoners more favorably than male prisoners could not be resolved at the motion to dismiss phase. (Louisiana Correctional Institution for Women)

2001

U.S. Appeals Court
ADA- Americans with Disabilities Act
PAROLE

Armstrong v. Davis, 275 F.3d 849 (9th Cir. 2001). Disabled prisoners and parolees brought a class action against a governor, corrections secretary, and board of prison terms, alleging that policies and practices for parole and parole revocation proceedings violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court found that the defendants engaged in discrimination and entered a system-wide injunction requiring modification of policies and practices. The defendants appealed and the appeals court affirmed in part, vacated in part, and remanded in part. The appeals court held that the department's use of notification forms that were inadequate for prisoners and parolees who were visually impaired, deaf, illiterate, learning disabled, or retarded, and the reliance on untrained employees to determine which prisoners and parolees were disabled and what accommodations were reasonable, violated the plaintiffs' constitutional rights. The appeals court held that a system-wide injunction against the board of prison terms was warranted because the board failed to provide effective communications during notification, hearings and appeals, failed to select facilities accessible to mobility-impaired persons, and failed to provide reasonable accommodations. The court noted that the board failed to offer any justification for its failures at trial. (California Youth and Adult Corrections Authority, California Department of Corrections, California Board of Prison Terms)

U.S. District Court
CONDITIONS
HYGIENE

Benjamin v. Fraser, 161 F.Supp.2d 151 (S.D.N.Y. 2001). Department of Corrections officials who had entered into a consent decree governing conditions for pretrial detainees in New York City jails moved for the immediate termination of those decrees under the provisions of the Prison Litigation Reform Act (PLRA). The consent decree involved fourteen jails that housed over 10,000 inmates. The district court terminated some provisions of the decree, including those involving inmate correspondence and law libraries. The court held a hearing on the issues of environmental health and personal hygiene supplies.

The court held that ventilation problems constituted a violation of detainees' due process rights. In one facility, experts were unable to detect any ventilation in 21 of 43 locations, including two medical treatment rooms.

The court found that temperature extremes violated due process, noting that extremes of temperature present health risks as well as discomfort. One expert testified that the human comfort zone is between 67 and 78 degrees Fahrenheit, but because inmates are for the most part sedentary, their general comfort zone is between 72 and 78 degrees. The Department of Corrections had adopted the minimum standards established in the New York City Health Code:

between October 1 and May 31st between 0600 and 2200 hours a temperature of at least 68 degrees F when outside temperatures fall below 55 degrees F, and between 2200 and 0600 at least 55 degrees F if the outside temperature falls below 40 degrees F. The court found that "credible evidence tends to show that air temperatures in the Department's jails do not meet constitutional standards." District Judge Baer stated that a Department report that measured temperatures on April 24 and 25, 2000, "does nothing to assuage my concerns that detainees are being subjected to constitutionally indefensible air temperatures" because the survey was conducted on days when the outside temperature was moderate. The judge also noted that the Department's maintenance records showed numerous references to reports of no heat in Department facilities.

The court ordered comprehensive monitoring of temperatures during the succeeding winter and summer so that the adequacy of the jails' heating and cooling facilities could be determined.

According to the court, the presence of some inoperable sinks, toilets and showers in the jails did not rise to the level of a violation of pretrial detainees' due process rights. Judge Baer concluded "Clearly, in some of the institutions the plumbing is deplorable, but one must keep in mind that we are dealing with prisons juxtaposed with the tests set out in the applicable caselaw."

The court found that the mere presence of vermin in the jails did not rise to the level of a violation of pretrial detainees' due process rights. The court distinguished between "vermin activity" and "vermin infestation." State health code violations in the jails' food service were not found to rise to the level of a violation of pretrial detainees' due process rights, where sanitary practices were adequate and no detainee had suffered a reported incident of food-borne illness. The court held that sporadic denial of detainee personal hygiene items in the jails did not rise to the level of a violation of pretrial detainees' due process rights, where the jails overall provided adequate hygiene supplies. According to the terms of the consent decree, each detainee, upon admission to an institution, is provided at Department expense with personal items that include but are not limited to: soap, a toothbrush, toothpaste, a drinking cup, toilet paper, a towel, a comb and a mirror (if one was not available in the assigned cell.) These items are to be replenished or replaced as needed by the institution at the Department's expense.

According to the court, the fact that the city jails' laundry facilities were inadequate to handle all of the pretrial detainees' clothing, and that laundry detergent was generally unavailable, did not rise to the level of constitutional violations, where the detainees had adequate opportunity to launder their clothes by hand.

Due process violations were found from the combination of various unsanitary conditions in cells and clinics, together with poor lighting. The court noted that the *combination* of inhumane conditions of confinement may violate the constitution when taken together-- such as cold temperature combined with lack of blankets-- even though each condition alone would not amount to a violation. The conditions included: unsanitary mattresses; soiled light shields and other lighting problems; dirty or clogged ventilation registers; vermin activity; mildewed and decrepit bathroom and shower areas; clogged toilets; dirty janitor's closets; shortages of laundry detergent; dirty cells; and dirty clinic areas.

The court noted that adequate lighting is one of the fundamental attributes of adequate shelter. Lighting problems can be traced to several problems, according to the court: (1) non-working light fixtures; (2) inadequate light bulb wattage; and (3) obstructed light shields. The court concluded [pun intended?]: "In light of the above, it is clear that detainees in the Department's jails, with the exception of ARDC and AMKC, are subjected to constitutionally inadequate light." The court directed the parties to submit recommendations for prospective relief and suggested that they look into the foot candle standards maintained within ARDC and AMKC as an example of constitutionally sufficient lighting. Lighting was found to be deficient in two medical areas and these were placed under continuing court supervision.

The court found that excessive noise may violate the Constitution if it threatens inmates' mental health or deprives them of sleep. The court cited the standards of the American Public Health Association (APHA) and the American Correctional Association (ACA) which set maximum noise levels at 70 decibels during the daytime and 45 decibels at night. Excessive noise was measured in one facility, caused by diesel generators that were scheduled to be decommissioned. The court ordered the parties to submit recommendations for prospective relief at two facilities.

Conditions in modular housing units warranted separate treatment by the court. The units were designed as temporary housing and have a life expectancy of five years; the oldest units had been in use for more than 15 years. The court ordered the Department to submit a schedule that would phase the deficient units out of use by mid-2003.

The court found that officials were deliberately indifferent to the problems with ventilation, noting that the consent decree had been in effect for several years. (New York City Department of Corrections)

U.S. Supreme Court
ADA- Americans with Disabilities Act
HANDICAP

Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001). A security officer for an Alabama state youth detention facility, and a nurse for an Alabama state university hospital brought separate lawsuits seeking monetary damages against their state employers under Title I of the Americans With Disabilities Act (ADA). The cases were consolidated on appeal. The federal appeals court upheld the right of the employees to pursue such claims, finding that Congress had validly abrogated the Eleventh Amendment immunity of the states from suits for damages when it enacted ADA. The U.S. Supreme Court reversed, finding that Congress exceeded its constitutional authority when it attempted to allow private individuals to seek money damages against the states for violations of ADA. The Court ruled that Congress failed to identify

a "history and pattern of irrational employment discrimination by the States against the disabled." The Court stated that it would be "entirely rational and therefore constitutional for a state employer to conserve scarce financial resources by hiring employees who are able to use existing facilities," rather than having to make reasonable accommodations for disabled employees who are not able to easily use such facilities. (Alabama)

U.S. District Court
SEX DISCRIM-INATION

Booth v. Barton County, KS, 157 F.Supp.2d 1178 (D.Kan. 2001). An inmate and a former inmate brought an action seeking injunctive relief under § 1983, alleging unconstitutional conditions of confinement at a county jail. The district court granted summary judgment in favor of the defendants. The court found that the former inmate's claims, which sought only injunctive relief, were moot since the inmate had been released and was no longer a prisoner. The court refused to let the female inmate raise clams of gender-based unequal treatment at the summary judgment stage of trial because she failed to introduce the claims in her complaint, or at the pretrial conference. The female inmate had asked permission to allege that the jail had an insufficient number of female officers to provide equal exercise to female inmates, and that the jail's male-only trustee policy resulted in more exercise time for male inmates. The jail was allegedly designed to accommodate 19 inmates but had a policy of housing up to 72 inmates. (Barton County Jail, Kansas)

U.S. District Court
CONDITIONS

Caldwell v. District of Columbia, 201 F.Supp.2d 27 (D.D.C. 2001). An inmate filed a § 1983 action against the District of Columbia and several employees of its corrections department, alleging unconstitutional conditions of confinement and denial of medical care. A jury entered a verdict in favor of the inmate, on all claims, and awarded $174,178. The appeals court granted judgment for the defendants as a matter of law, in part, denied judgment for the defendants in part, and did not reduce the damage award. The court found that statements by the inmate's attorney during his closing argument, suggesting specific dollar amounts to be considered by the jury, did not warrant a new trial. The appeals court held that findings that conditions were unconstitutional were supported by evidence, as were findings that officials were deliberately indifferent to the inmate's serious medical needs. The appeals court held that the Prison Litigation Reform At (PLRA) does not require a prisoner to allege or prove serious, permanent physical injury in order to bring an action for violation of his constitutional rights. The appeals court held that the prisoner sufficiently alleged a "physical injury" for the purposes of PLRA, with allegations that excessive heat in his cell made him dizzy, dehydrated, and disoriented, gave him a severe rash, and that smoke from rolled toilet paper "wicks" and frequent use of mace gave him bronchial irritation and a runny nose. The inmate also alleged that the small bunk aggravated his arthritis. According to the court, the inmate did not have to allege that excessive noise in the cell block caused him hearing loss, where his contention was that the noise levels contributed a deprivation of sleep. 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. The appeals court upheld the inmate's deliberate indifference claim, noting that it was supported by evidence that treatment for the inmate's glaucoma and skin cancer was delayed for substantial periods. (Maximum Security Facility, Lorton Correctional Complex, District of Columbia)

U.S. Appeals Court
ADA- Americans with Disabilities Act
HANDICAP

Chisolm v. McManimon, 275 F.3d 315 (3rd Cir. 2001). A hearing-impaired detainee brought a suit against the warden of a pretrial detainment facility and county court system, alleging violations of the Americans with Disabilities Act (ADA), Rehabilitation Act, § 1983 and a state discrimination law, for failing to provide an interpreter and other services. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court reversed and remanded, finding that the county court system was not entitled to Eleventh Amendment immunity during an ongoing merger with the state court system. The appeals court held that summary judgment was precluded by genuine issues of material fact as to: (1) the effectiveness of alternate aids or services provided to the detainee when the jail failed to provide a sign language interpreter during the intake process, activate closed captioning capabilities on a prison television, (2) provide a text device for transcribing telephone calls; and whether pencil and paper were effective auxiliary aids in place of a sign language interpreter; and (3) whether exceptions to institutional rules on telephone calls were an effective alternative to providing special telephones. The court held that extradition was a "program" within the meaning of ADA and the Rehabilitation Act such that the court was required to ensure the ability of the detainee to participate in the hearing. When the detainee arrived at the detention facility on a Saturday, he was locked down in his cell to keep him apart from the general population until Monday when facility classification staff arrived. This practice was applied to all detainees admitted when classification staff members were not working at the facility. Such unclassified detainees consumed meals in their cells and did not have television or telephone privileges. When the detainee was not provided with an interpreter at intake he became upset and was eventually interviewed by a nurse, who concluded that he was a suicide risk. He was kept in solitary lockup from Saturday until Tuesday. On Monday he was taken to meet with a classification staff member, where he was interviewed and was given a medium security classification. But the staff member had described the detainee as a "vagrant" in spite of the fact that he had worked for the U. S. Postal Service for 13 years and had lived at the same address for three years. This error

added two points to his classification score, moving him from "minimum" security to "medium."(Mercer County Detention Center, New Jersey)

U.S. Appeals Court
DISCRIMINATION

Driver v. Groose, 273 F.3d 811 (8th Cir. 2001). A state prison inmate sued to recover for the alleged violation of her constitutional rights in connection with prison officials' censorship of a music-cassette tape that she had ordered through the mail. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the inmate, who was a member of a racial minority, could not recover on an equal protection theory, given the complete lack of evidence that she had been treated differently from similarly situated white inmates who had attempted to receive through the mail and uncensored, the same explicit-lyric tape that she had ordered. (Missouri)

U.S. District Court
DISCIPLINE

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. Facility, Kansas)

U.S. Appeals Court
RACIAL DISCRIM.
RELIGION

Morrison v. Garraghty, 239 F.3d 648 (4th Cir. 2001). An inmate sued prison officials under § 1983 alleging violation of his equal protection rights because of their refusal to consider his request to obtain Native American religious items because he was not of Native American heritage. The district court enjoined officials from refusing to consider the inmate's request solely on the basis that he was not of the Native American race, and the officials appealed. The appeals court affirmed, finding that the officials' refusal violated the equal protection clause. The court noted that the inmate's claim involved the right to be treated the same as Native American inmates who requested the same items. According to the appeals court, prison officials could not measure the sincerity of an inmate's beliefs solely by his racial make-up, and the policy was not reasonably related to legitimate penological interests inasmuch as the items requested were not any less dangerous in the hands of Native American inmates. (Greensville Correctional Center, Virginia)

U.S. District Court
ADA- Americans with
Disabilities Act

Navedo v. Maloney, 172 F.Supp.2d 276 (D.Mass. 2001). A state inmate brought § 1983 and Americans with Disabilities (ADA) actions against a state, a private medical care provider, and medical employees, alleging that their refusal to allow him access to a wheelchair and to disabled-accessible facilities violated his civil rights and caused severe and irreparable damage to his leg. The district court denied summary judgment for the defendants, in part, finding that fact issues remained as to the extent of the inmate's injuries, and denied qualified immunity to the state corrections commissioner. The commissioner had rejected the medical staff's recommendation that the inmate be transferred to another facility with appropriate accommodations and allegedly failed to maintain prisons in compliance with federal standards of accessibility. (Massachusetts Correctional Institution at Norfolk and Massachusetts Correctional Institution at Shirley)

U.S. District Court
SEXUAL
HARASSMENT

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 Comm'y Corr. Ctr., Oklahoma)

U.S. Supreme Court
ACCESS TO COURT
FREE SPEECH AND ASSOCIATION

Shaw v. Murphy, 121 S.Ct. 1475 (2001). The U.S. Supreme Court reversed a federal appeals court ruling that held that inmates have a First Amendment right to give legal assistance to other prisoners. A Montana state prisoner sent a letter to a fellow inmate containing legal advice. The letter was intercepted and the inmate who sent it was sanctioned for violating prison rules that prohibited insolence and interfering with due process hearings. The appeals court ruled that a First Amendment right to provide legal advice to other prisoners should be taken into account when determining if a prison regulation that impinges on inmates' constitutional rights is valid. In a unanimous decision, the Supreme Court held that there is no such "special First Amendment right" to provide legal assistance to fellow prisoners that enhances any protections otherwise available. According to the Court, prisoners' constitutional rights are "more limited in scope" than the rights held by individuals in society at large and the Court has "generally deferred" to prison officials' judgment in upholding regulations which limit prisoners' First Amendment rights. (Montana)

2002

U.S. Appeals Court
SELF-INCRIMINATION PROGRAMS

Ainsworth v. Stanley, 317 F.3d 1 (1st Cir. 2002). Convicted sex offenders sued a state corrections department alleging violation of their Fifth Amendment right against self-incrimination. The department required offenders to disclose their histories of sexual misconduct without offering immunity for statements made in connection with the program, in order to participate in the department's sex offender program. The district court dismissed the action and the appeals court affirmed. The United States Supreme Court granted certiorari, vacated, and remanded for reconsideration in light of *McKune v. Lile*. On remand, the appeals court held that the program did not violate the Fifth Amendment. The court noted that criminological studies and social science research found that admission of crimes was a necessary prerequisite for successful treatment of sex offenders. The court held that the reduced likelihood of parole for offenders who refused to participate in the program did not constitute a penalty sufficient to compel incriminating speech. (New Hampshire Department of Corrections)

U.S. District Court
REHABILITATION ACT
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. District Court
CLASSIFICATION
CONDITIONS
DUE PROCESS

Austin v. Wilkinson, 189 F.Supp.2d 719 (N.D.Ohio 2002). A class of current and former prisoners at a high maximum security prison brought a § 1983 action seeking injunctive relief, alleging denial of due process in their placement and retention at the facility. The district court held that: (1) the inmates had a liberty interest in their conditions of confinement; (2) the inmates were entitled to due process protection in decisions to send them and retain them at the facility; (3) the inmates were denied due process in the decisions to send them to, and retain them at, the facility; and (4) new corrections policies failed to provide adequate due process safeguards. The court held that the combination of conditions faced by inmates at the high maximum security prison imposed an atypical and significant hardship, giving the inmates a liberty interested protected by due process. The court noted that inmates in the prison were subjected to lengthy stays of indefinite duration, had extremely limited contact with other individuals, were never allowed outdoor recreation, were subject to extremely intrusive restrictions when they were allowed out of their cells, and were denied parole eligibility.

The court held that inmates sent to the prison were entitled to minimal due process consisting of: (1) twenty-four hour advance notice of all specific evidence relied upon to support reasons for reclassification; (2) a requirement that an inmate be allowed to appear at his reclassification hearing and present evidence, including witnesses and documents; and (3) a requirement that the reclassification committee issue a written statement specifically describing

evidence relied on and reasons for its recommendation. "Having found that the defendants violated, and will continue to violate, the plaintiffs' constitutionally liberty interest," the court ordered the parties to file proposed injunctive orders to correct the violations. (Ohio State Penitentiary)

U.S. Appeals Court
HARASSMENT
RACIAL DISCRIMINATION

Blades v. Schuetzle, 302 F.3d 801 (8th Cir. 2002). A state prisoner brought a § 1983 action against prison officials, alleging that they failed to protect him from a fellow inmate, and that a correctional officer discriminated against him because of his race. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that the officials' decision to release the inmate into the general prison population did not rise to the level of deliberate indifference, nor did their failure to notify the prisoner that another inmate had threatened him. The court noted that the prisoner's own statements to officials, that the inmate posed no risk of harm to him, barred his failure-to-protect claim. The appeals court found that the alleged offensive statements made by a correctional officer, ridiculing the color of the prisoner's palms and telling the prisoner to smile so that he could be seen in the dark, did not rise to an actionable level under the Fourteenth Amendment, although the statements were "thoroughly offensive and utterly reprehensible." (North Dakota Department of Corrections and Rehabilitation)

U.S. Appeals Court
VERBAL HARASSMENT

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. Supreme Court
PROPERTY

Dusenbery v United States, 534 U.S. 161 (2002). A federal prisoner serving time for drug charges challenged the forfeiture of cash that was seized when he was arrested. The FBI had implemented an administrative process to forfeit cash that law enforcement officers had seized when they executed a search warrant for the home where he was arrested. Applicable law at the time required the agency to send written notice of the seizure and the applicable forfeiture procedures to each person who appeared to have an interest in the property. The FBI sent a notice by certified mail addressed to the prisoner, in care of the prison where he was incarcerated, as well as to the address of the residence where he was arrested and to an address in the town where his mother lived. No response was received and the money was turned over to the U.S. Marshals Service. The U.S. Supreme Court, in a 5 - 4 decision, held that this procedure was acceptable, rejecting the argument that it violated the prisoner's due process rights. The government agency seeking to forfeit an individual's property rights must attempt to provide actual notice, the Court reasoned, it does not necessarily have to successfully provide it. (Portage County Jail, Ohio)

U.S. Appeals Court
FALSE IMPRISONMENT

Fairley v. Luman, 281 F.3d 913 (9th Cir. 2002). An arrestee who was detained by a police officer and held for 12 days on outstanding warrants for the arrest of his twin brother brought a § 1983 action alleging false arrest and violation of due process. The district court entered judgment upon jury verdict in favor of police officer defendants, but against the city defendants in the amount of $11,250, and awarded attorney fees in the amount of $92,211 to the arrestee. The city appealed and the appeals court affirmed, finding that the city's detention of the arrestee deprived him of a significant liberty interest and that the city's warrant procedures constituted "policies" for the purposes of § 1983. The court noted that neither a fingerprint comparison nor a Department of Motor Vehicles check was completed during the arrestee's 12 days of detention and that the arrestee continuously protested the mistaken identity. He was only released after he filed a citizen's complaint from jail. (City of Long Beach, California)

U.S. Appeals Court
EQUAL PROTECTION

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
DEATH
FREE SPEECH AND ASSOCIATION

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. Supreme Court
DISCIPLINE

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. District Court
RACIAL DISCRIMINATION
CRIPA-Civil Rigths of Institutionalized Persons Act
PLRA-Prison Litigation Reform Act

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. Supreme Court
CIVIL COMMITMENT
SEX OFFENDER

Kansas v. Crane, 122 S.Ct. 867 (2002). In a prior decision, the United States Supreme Court upheld the constitutionality of the Kansas Sexually Violent Predator Act (Kansas v. Hendricks, 521 U.S. 346). In that decision the Court characterized a dangerous sexual offender's confinement as civil rather than criminal, finding that the criteria for confinement that was specified in the Kansas statute--"mental abnormality or personality disorder"--satisfied due process. In this case, the Court interpreted the same statute, finding that it is unconstitutional to effect civil commitments of dangerous sexual offenders without any determination that they have a "lack-of-control" over their dangerous propensities. The Court held that this did not require a "total" or "complete" lack of control to be shown, but that some finding of lack of control is essential, at least "proof of serious difficulty in controlling behavior." (Kansas)

U.S. Appeals Court
SELF-INCRIMINATION

Lile v. McKune, 299 F.3d 1229 (10th Cir. 2002). A state inmate brought a § 1983 claim against prison officials, alleging that a sexual abuse treatment program and corresponding regulations and policies violated his Fifth Amendment right against self-incrimination. The district court granted summary judgment for the inmate and the appeals court affirmed. The United States Supreme Court (122 S.Ct. 2017) reversed and remanded, finding that alterations in the inmate's prison conditions resulting from his refusal to participate in a Sexual Abuse Treatment Program

(SATP) were not so great as to constitute compulsion for the purposes of the Fourth and Fifth Amendments. The appeals court vacated its prior opinion and remanded the case to the district court with instructions to dismiss the complaint in its entirety. (Kansas Department of Corrections)

U.S. District Court
PROGRAMS
EQUAL PROTECTION

Little v. Terhune, 200 F.Supp.2d 445 (D.N.J. 2002). A prisoner housed in a maximum security prison brought a civil rights suit against state prison officials for allegedly violating his equal protection rights by failing to provide him with educational programming while he was confined in an administrative segregation unit. The district court held that the denial of educational programming to prisoners in administrative segregation did not violate equal protection on the basis that the programs were available to the general prison population, to younger inmates in administrative segregation, or to all inmates in segregation units at other institutions. The court noted that although inmates do not have a constitutional right to educational and work programs, once the state grants such rights to prisoners it may not invidiously discriminate against a class of inmates in connection with those programs unless the difference in treatment is rationally related to the legitimate governmental interest to justify the disparate treatment. The court found a legitimate connection, where prison officials' allocation priorities for the scarce resource of educational services responded to security concerns and budget restraints. The court also found that there was a legitimate government interest in promoting innovative prison programs that might be stymied by a requirement that there be system-wide uniformity. (N.J. State Prison)

U.S. Appeals Court
PROGRAMS
CLASSIFICATION

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 that 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. Supreme Court
SELF INCRIMIN-
ATION
SEX OFFENDERS
PROGRAMS

McKune v. Lile, 536 U.S. 24 (2002). A Kansas prisoner convicted of rape and related crimes was ordered to participate in a Sexual Abuse Treatment Program (SATP) several years before his scheduled release. The program requires inmates to complete and sign an "admission of responsibility" form in which they accept responsibility for the crimes for which they have been sentenced, and to complete a sexual history form detailing all prior sexual activities, even if the activities constitute uncharged criminal offenses. This information is not privileged and might be used against them in future criminal proceedings. The prisoner was informed that if he refused to participate, his prison privileges would be reduced, resulting in the automatic curtailment of his visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges. He would also be transferred to a potentially more dangerous maximum-security unit. He refused to participate, arguing that the required disclosures would violate his Fifth Amendment privilege against compelled self-incrimination. A federal appeals court upheld summary judgment for the prisoner, finding that the use of these incentives violated the Fifth Amendment. The U.S. Supreme Court reversed the judgment of the appeals court, concluding that the program serves a vital penological purpose--rehabilitation--and that offering prisoners minimal incentives to participate did not amount to compelled self-incrimination. The Court noted that the prisoner's refusal did not extend his prison term nor affect his eligibility for good-time credits or parole. According to the Court, transfer to a less desirable maximum-security unit is not designed to punish prisoners, but is incidental to a legitimate penological purpose. (Kansas)

U.S. District Court
HANDICAP
PROGRAMS
ADA- Amer.with
Disabilities Act

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
SEXUAL HARASSMENT

Morales v. Mackalm, 278 F.3d 126 (2nd Cir. 2002). An inmate brought a civil rights action against corrections personnel alleging they were deliberately indifferent to his serious medical needs, sexually assaulted him, discriminated against him on the basis of his race, and retaliated against him because he filed a grievance. The district court dismissed the case with prejudice and the inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the inmate stated an actionable claim for retaliation based on officials' actions in transferring him to a psychiatric center shortly after he filed a grievance. The appeals court found that the allegation that a prison employee called the inmate a "stoolie" in front of other inmates did not satisfy the adverse action requirement of the inmate's claim of retaliation. According to the appeals court, a prison employee's alleged conduct of asking the inmate to have sex with her and to masturbate in front of her and other female employees was not sexual harassment in violation of the Eighth Amendment. (Woodburne Correctional Facility, Marcy Correctional Facility, Sullivan Correctional Facility, New York)

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 Correctional Training Center)

U.S. Appeals Court
CONDITIONS
FAILURE TO PROTECT
PRETRIAL DETAINEES

Oliver v. Keller, 289 F.3d 623 (9th Cir. 2002). A pretrial detainee brought a § 1983 action against a county sheriff and two jail employees, alleging confinement in unconstitutional conditions. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the detainee did not suffer more than a de minimis physical injury from his jail confinement and therefore could not make the required showing for the purpose of the Prison Litigation Reform Act (PLRA). But the appeals court held that the detainee was entitled to seek nominal and punitive damages under the Fourteenth Amendment. The detainee had admitted during a deposition that the back and leg pain he allegedly suffered from sitting and sleeping on benches and the floor of a temporary cell was not serious. The detainee had been temporarily confined on three separate occasions. In one instance he was confined in a temporary holding cell equipped with benches, toilets and sinks. Inmates eat three meals per day in the cell, and are not provided with cots, blankets or pillows. At one time the detainee was housed for 51 hours with approximately 50 other men in a cell measuring 404 square feet. He was transferred to another cell where he spent another 74 hours confined with an average of 18 prisoners in a cell that measured 174 square feet. The detainee described conditions in the cells as "a human carpet." (Clark Co. Det. Center, Nevada)

U.S. Appeals Court
EQUAL PROTECTION
PRIVACY
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. Appeals Court
SELF-INCRIMINATION

Reed v. McKune, 298 F.3d 946 (10th Cir. 2002). A state prison inmate brought a § 1983 action against corrections officials, challenging their policy regarding participation in a sexual abuse treatment program. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that requiring the inmate to suffer revocation of privileges and denial of parole if he declined to participate in the program, did not violate the Due Process or Ex Post Facto clauses, nor did it violate the inmate's rights against self-incrimination. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
SELF-INCRIMINATION
PROGRAMS

Searcy v. Simmons, 299 F.3d 1220 (10th Cir. 2002). An inmate brought a § 1983 action against prison officials, challenging reduction of his privileges following his refusal to participate in a sexual abuse treatment program. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the adverse consequences faced by the inmate for refusing to make admissions required for participation in the treatment program were not so severe as to amount to compelled self-incrimination. The court noted that the prisoner's loss of privileges and the opportunity to earn future good time credits was not punishment for his refusal to make the admissions, but rather were consequences of his inability to complete the program. The appeals court also held that the state's act of sending the inmate's property to his relatives without his consent did not violate the inmate's due process rights, although the inmate claimed that his relatives were not likely to return his property. The inmate had refused to indicate where his property should go before the state decided to send it to his relatives. The court noted that there is a difference between the right to own property, and the right to possess property while in prison. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
EQUAL PROTECTION

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
EQUAL PROTECTION
PAROLE
ADA- Amer. with Disabilities Act

Thompson v. Davis, 282 F.3d 780 (9th Cir. 2002). State prisoners with substance abuse histories brought an action seeking prospective and injunctive relief against state parole officials, alleging that the officials followed an unwritten policy of automatically denying parole to prisoners with substance abuse histories, in violation of the Americans with Disabilities Act (ADA). The district court dismissed the action and the prisoners appealed. The appeals court reversed, finding that the prisoners' complaint adequately alleged that they were disabled and were qualified for the pubic benefit they sought (consideration for parole), and that they were denied the benefit of a public program or activity, as required to establish an ADA claim. The appeals court held that parole proceedings, as a matter of first impression, were an "activity of a public entity" that fell within the reach of the ADA. The court noted that drug addition that substantially limits one or more major life activity is a recognized "disability" under the ADA. (California Board of Prison Terms)

U.S. Appeals Court
ADA- Americans with Disabilities Act
PAROLE

Thompson v. Davis, 295 F.3d 890 (9th Cir. 2002). A state prisoner who had a history of substance abuse brought an action for prospective injunctive relief against state parole officials, alleging that the parole authority followed an unwritten policy of automatically denying parole to prisoners with substance abuse histories, in violation of the American with Disabilities Act (ADA). The district court dismissed the action; the appeals court reversed and remanded. On remand the district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding that a parole board may not categorically exclude a class of disabled people from consideration for parole because of their disabilities, under the provisions of ADA. The court found that while the term "qualified individual with a disability" under ADA does not include an individual who is currently engaging in the illegal use of drugs, the ADA does protect individuals who have successfully completed, or are participating in, a supervised drug rehabilitation program and are no longer using illegal drugs. (Calif. Youth and Corrections Agency, California Board of Prison Terms)

U.S. District Court
EX-OFFENDER

U.S. v. Scales, 231 F.Supp.2d 437 (E.D.Va. 2002). A federal district court held that a defendant failed to show that his civil rights had been restored under Virginia law in connection with a prior felony conviction, so as to preclude his conviction for possession of a firearm by a convicted felon. The court found that a voter registration card issued in the defendant's name by the Commonwealth of Virginia, and a certificate of discharge issued by the Virginia Parole Board, did not show that the defendant's civil rights had been restored under Virginia law. The court noted

that the defendant never took affirmative action to have his civil rights restored by the Governor or another appropriate authority. (Eastern District, Virginia)

U.S. District Court
PAROLE
DUE PROCESS

Valdivia v. Davis, 206 F.Supp.2d 1068 (E.D.Cal. 2002). Parolees filed a class action lawsuit challenging a state's parole revocation procedures, and alleging violation of their due process rights. The district court held that the state's unitary parole revocation hearing system violated the parolees' procedural due process rights. According to the court, the hearing system, which permitted detention of parolees upon a parole officer's issuance of a parole hold without a preliminary hearing to determine probable cause, violated the parolees' rights even though the state permitted a comprehensive hearing prior to making a final revocation decision. The court noted that the average delay in holding the final revocation hearing was between thirty-one and forty-five days. (California Board of Prison Terms)

U.S. Appeals Court
HOMOSEXUALS
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 Department of Corrections)

U.S. District Court
EQUAL PROTECTION
DISCRIMINATION

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 sufficiently 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)

U.S. Appeals Court
HOMOSEXUALS

Veney v. Wyche, 293 F.3d 726 (4th Cir. 2002). An inmate brought a § 1983 action against prison officials, alleging they treated him differently from other inmates because of his gender and sexual preference, in violation of his right to equal protection. The district court dismissed the claim and the appeals court affirmed. The appeals court held that the prison practice of segregating homosexual male inmates was based on legitimate penological interests, and that the gender-related disparate treatment in the housing of homosexuals was rationally calibrated to address legitimate concerns. According to the court, institutions for females are much less violent than those for males, and male inmates were more likely than females to have homophobic attitudes. The court noted that prison officials had an absence of ready alternatives available. (Riverside Regional Jail, Virginia)

2003

U.S. Appeals Court
ALIENS
ACCESS TO COURT

Al Odah v. U.S., 321 F.3d 1134 (D.C.Cir. 2003). Aliens being detained by the United States government at the U.S. Naval Base at Guantanamo Bay, Cuba, brought actions contesting the legality and conditions of their confinement. The district court dismissed the action for lack of jurisdiction and the detainees appealed. The appeals court affirmed, finding that the privilege of litigation did not extend to aliens in military custody outside of United States territory. (U.S. Naval Base at Guantanamo Bay, Cuba)

U.S. Appeals Court
SEX OFFENDER
DUE PROCESS
SELF-
INCRIMINATION

Allison v. Snyder, 332 F.3d 1076 (7th Cir. 2003). Persons who were civilly confined under the Illinois Sexually Dangerous Persons Act brought a § 1983 action seeking damages and injunctive relief, alleging that the Act was implemented in an unconstitutional manner. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court reversed, finding that persons civilly confined under the Act could be placed in a state prison and subjected to the prison's rules, without violating due process. The court also found that a sex offender group therapy program for persons civilly confined under the Act did not violate their privilege against compelled self-incrimination or the due process clause. The court noted that any incriminating statements made during therapy could be suppressed at a criminal trial, and that the state's use of the program was not outside of professional therapeutic norms. (Big Muddy Correctional Center, Illinois)

U.S. Appeals Court
SEARCH
CRIPA- Civil Rights of
Institutionalized
Persons Act

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. Appeals Court
PAROLE

Hunter v. Ayers, 336 F.3d 1007 (9th Cir. 2003). A state prisoner filed a federal habeas corpus petition, alleging that application of a change in parole regulations removed his right to restoration of lost good time, in violation of the ex post facto clause. The district court granted the writ and the appeals court affirmed. The appeals court held that application of the amended prison regulations to deny the inmate restoration of good time credits violated the ex post facto clause, where the regulations were not amended until after the inmate's offense. The court found that a parole regulation in effect at the time of the infraction was not rendered invalid by a change in the statute governing the good time system, because the new regulation made restoration of forfeited credits discretionary, rather than mandatory, and did not prohibit the restoration of good time. (California Department of Corrections)

U.S. District Court
RACIAL DISCRIM-
INATION

Jarno v. Lewis, 256 F.Supp.2d 499 (E.D.Va. 2003). An immigration detainee who was held in a regional jail pursuant to a contract with federal authorities brought a civil rights suit against the regional jail authority, jail superintendent, officers who allegedly attacked him, and Immigration and Naturalization Service officials. The district court held that the receipt of federal funds in consideration of a contract to temporarily house federal detainees did not constitute "federal financial assistance" for the purpose of a national origin claim under Title VI of the Civil Rights Act. The detainee alleged that his injuries resulted from the authority's alleged failure to properly train its officers and that the authority condoned the use of excessive force. (Piedmont Regional Jail, Virginia)

U.S. Appeals Court
RACIAL DISCRIM-
INATION
CLASSIFICATION
EQUAL PROTECTION

Johnson v. State of California, 321 F.3d 791 (9th Cir. 2003). An African-American state prison inmate brought an action against prison administrators, alleging that a prison policy of using race as a factor in assigning a new inmate's initial cell mate violated the equal protection clause. The district court dismissed the case, but the appeals court reversed in part and remanded. On remand, the district court granted summary judgment for the prison administrators on qualified immunity grounds. The inmate appealed and the appeals court affirmed. The appeals court held that the policy did not violate the equal protection clause, given high racial tensions and violence existing at the prison. The court found the policy to be rationally related to a legitimate penological interest in protecting the safety of inmates, and found the policy to be neutral in that it did not provide an advantage or disadvantage to any race. The court noted that the policy was limited to the first 60 days after admission to a prison and that the remaining time in prison was integrated. Administrators had told the court that ignoring race in initial cell assignments would increase violence in those cells and would have a ripple effect on inmates and staff. The officials told the court that the suggested alternatives to the policy-- asking inmates about their gang affiliation or racial biases-- were not reasonable. (California Department of Corrections)

U.S. Appeals Court
ALIEN

Rosales-Garcia v. Holland, 322 F.3d 386 (6th Cir. 2003). Two Cuban citizens filed a petition for a writ of habeas corpus alleging that their indefinite detention by the Immigration and Naturalization Service (INS) following revocation of their immigration parole violated their constitutional rights. The district court denied the petition and the aliens appealed. The appeals court reversed and remanded. The appeals court held that the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) applied to the assessment of whether the aliens' detention violated statutory and constitutional law. The court found that the holding of *Zadvydas v. Davis* contains an implicit reasonable time limitation, which applies to aliens who are removable on grounds of inadmissibility. The court held that even if the *Davis* holding did not apply to the two Cuban citizens who arrived as part of the Mariel boat lift in 1980, their indefinite detention independently raised due process concerns, such that an implicit six month reasonable-time limitation applied to them. (Immigration and Naturalization Service)

U.S. Appeals Court
DISCIPLINE
RACIAL DISCRIM-
INATION

Serrano v. Francis, 345 F.3d 1071 (9th Cir. 2003). A physically disabled black prison inmate appealed an order that granted summary judgment in favor of a correctional officer on claims that officials denied the inmate due process and equal protection by refusing to allow him to present live witness testimony during a prison disciplinary hearing. The appeals court affirmed in part and reversed in part. The appeals court held that the inmate's physical disability, coupled with his confinement in administrative segregation for nearly two months in a unit that was not designed for disabled persons, gave rise to a protected liberty interest under the Due Process Clause. The court noted that the inmate was denied use of a wheelchair which he had been allowed to use in the general population, allegedly could not take a proper shower, could not use the toilet without hoisting himself up by the seat, had to crawl into bed by his arms, could not participate in outdoor exercise in the yard, and was forced to drag himself around a vermin and cockroach-infested floor. The court held that a correctional officer violated the inmate's due process right to call witnesses in his defense during a disciplinary hearing, which implicated a protected liberty interest, because

the officer offered no reason for refusing to allow live witness testimony on the inmate's behalf. But the court concluded that the correctional officer was entitled to qualified immunity because the "contours of the protected liberty interest" had not been determined with sufficient specificity so that the officer had fair warning that his levying of the punishment would deprive the inmate of his constitutional right to be free from an atypical and substantial prison hardship. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the white correctional officer's decision not to allow live witness testimony in the black prisoner's disciplinary hearing was racially motivated. (California Institute for Men, Chino, California)

U.S. Appeals Court
EXECUTION

Singleton v. Norris, 319 F.3d 1018 (8th Cir. 2003). A death row prisoner who was being forcibly administered psychotropic medication sought an order ordering a halt to the treatment. The state court denied his motions and he petitioned for a writ of habeas corpus seeking a stay of execution of his death sentence. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that, on a matter of first impression, a state does not violate the Eighth Amendment or due process by executing an inmate who has regained competency through forced medication that is part of appropriate medical care. (State of Arkansas)

U.S. District Court
SEXUAL HARASSMENT
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
CIVIL COMMITMENT
SEX OFFENDER

Williams v. Meyer, 346 F.3d 607 (6th Cir. 2003). A state prisoner who was committed under Michigan's Criminal Sexual Psychopath Act sought habeas relief. The district court denied the petition and the prisoner appealed. The appeals court reversed, vacated and remanded. The appeals court held that the prisoner's claim that it was more difficult to obtain release under the Act than under Michigan's Mental Health Code could warrant habeas relief, if the state's reasons for such differences were not compelling. The prisoner alleged that the Act's discharge provision did not necessarily require proof of likelihood of a prisoner's future dangerousness for continued commitment, in violation of due process. (Michigan)

2004

U.S. District Court
DISCRIMINATION
HOMOSEXUALS

Akridge v. Wilkinson, 351 F.Supp.2d 750 (S.D.Ohio 2004). A prison chaplain brought a civil rights action against prison officials for their alleged retaliation against him for exercising his free speech rights. The district court granted summary judgment in favor of the defendants. The court held that the chaplain's statements regarding the immorality of homosexuality, which he had made to justify his decision to prohibit a homosexual inmate from serving as the director of a choir, did not address matters of public concern as required to support a First Amendment retaliation claim. The court found that prison officials, who imposed a fine of two days on the chaplain for his insubordination in refusing to comply with an order to appoint the inmate director of the choir, disciplined the chaplain for his insubordinate actions, not for his statements about homosexuality that were made in support of his actions. The chaplain asserted that permitting a homosexual inmate to have a leadership role in the prison choir would potentially encourage inmates to violate prison rules against sexual behavior. According to the court, the chaplain offered no precedent sufficient to convince prison officials that his religious beliefs and opinions would outweigh the state's interest in preventing discrimination against inmates. (Madison Correctional Institution, Ohio)

U.S. District Court
SEX OFFENDERS
ACCESS TO COURT
CONDITIONS

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
SEX OFFENDER

Beebe v. Heil, 333 F.Supp.2d 1011 (D.Colo. 2004). A prison inmate sued a state, claiming that his due process rights were violated when he was expelled, without notice or explanation, from a sex offender treatment program that he was required to complete in order to be eligible for parole. The district court denied judgment on the pleadings for the state. The court held that the inmate had a cognizable property interest in being retained in the programs and had stated a claim that his procedural and substantive due process rights were violated. (Colorado Department of Corrections)

U.S. District Court
SEXUAL ABUSE

Bolton v. U.S., 347 F.Supp.2d 1218 (N.D.Fla. 2004). A female inmate brought an action against the federal Bureau of Prisons and a correctional officer, alleging that the officer coerced her into sex by threats of adverse official action. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that the government did not negligently hire and train the officer, but that fact issues remained as to whether the government negligently supervised and retained the officer. The court found that genuine issues of material fact, regarding whether the officer's supervisor knew that the female inmate was at risk of sexual assault by the officer, precluding summary judgment. The officer purportedly threatened to send the inmate to a special housing unit and affect her release date unless she submitted to his sexual demands. (Federal Bureau of Prisons, Florida)

U.S. District Court
VERBAL HARASSMENT

Booth v. King, 346 F.Supp.2d 751 (E.D.Pa. 2004). An inmate brought a pro se § 1983 action against employees and former employees of a city prison system. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the inmate failed to show that he suffered actual injury due to the alleged restrictions imposed on his access to the prison law library, opening of his legal mail outside of his presence, and destruction and confiscation of his legal papers. The court found that correctional officers did not violate the inmate's Eighth Amendment right against cruel and unusual punishment when they allegedly verbally abused him and threatened him with false reports, mail tampering, or violence. The court noted that verbal abuse and threats will not, without some reinforcing act accompanying them, sustain an Eighth Amendment claim. (Curran Fromhold Correctional Facility, Philadelphia, Pennsylvania)

U.S. Appeals Court
FREE SPEECH

Clement v. California Dept. of Corrections, 364 F.3d 1148 (9th Cir. 2004). A state inmate brought a § 1983 action, alleging that a regulation prohibiting inmates from receiving mail that contained material downloaded from the Internet violated his First Amendment rights. The district court granted summary judgment for the inmate and issued a permanent, statewide injunction against enforcement of the Internet mail policy. The state corrections department appealed, and the appeals court affirmed. The appeals court held that the regulation violated the First Amendment and that a statewide injunction was appropriate. The court found that the regulation was an arbitrary way to achieve a reduction in the volume of mail, and that the corrections department did not support its assertion that coded messages were more likely to be inserted into Internet-generated materials than into word-processed documents. The court noted that the origin of printed electronic mail was usually easier to trace than that of handwritten or typed mail. The court held that entering a statewide injunction barring enforcement of the policy was consistent with the provisions of the Prison Litigation Reform Act, where evidence showed that at least eight state prisons had adopted virtually identical policies and other prisons were considering it. The court held that the injunction was no broader than necessary to remedy the First Amendment violations. (Pelican Bay State Prison, California)

U.S. District Court
SEX OFFENDER
SELF INCRIMINATION

Donhauser v. Goord, 314 F.Supp.2d 139 (N.D.N.Y. 2004). A state prisoner inmate brought a pro se civil rights action seeking declaratory, injunctive and monetary relief. The district court held that the inmate's allegations supported a claim for violation of the inmate's Fifth Amendment privilege against self-incrimination and that preliminary injunctive relief was warranted. The court

enjoined prison officials from requiring, as part of the Sexual Offender Counseling Program, participants to divulge their history of sexual conduct, including illegal acts for which no criminal charges had been filed. (Oneida Correctional Facility, New York)

U.S. District Court
RACIAL DISCRIMINATION

Graves v. North Dakota State Penitentiary, 325 F.Supp.2d 1009 (D.N.D. 2004). A state inmate brought a § 1983 action alleging that his civil rights were violated when he was shown a racially insensitive drawing or cartoon by a guard, and that he was then retaliated against after he filed a grievance. The district court dismissed the action, finding that the guard's action did not amount to a constitutional violation. According to the court, the use of racially derogatory language does not, by itself, violate the Fourteenth Amendment, and the guard's action was not pervasive or severe enough to amount to unconstitutional discrimination. The guard allegedly showed the African-American inmate a picture and asked him and a nurse, another African-American, if they knew what it was. When they said they did not, the guard allegedly said it was the last thing a black person sees before they fall down a well, and then that it was the KKK looking down a well. (North Dakota State Penitentiary)

U.S. Appeals Court
EQUAL PROTECTION
JUVENILES

Hedgepeth v. Washington Metro. Area Transit Auth., 386 F.3d 1148 (D.C.Cir. 2004). The mother of a 12-year-old who was arrested and detained for eating a french fry in a rail transit station brought a § 1983 action. The district court ruled in favor of the defendants and the mother appealed. The appeals court affirmed, finding that the city's "no-citation" policy for juveniles was rationally related to the legitimate goal of promoting parental awareness and involvement with children who commit delinquent acts. The court held that the policy did not violate equal protection, even though adults who were seen eating food in transit authority facilities would merely have been given a citation. According to the court, classifications based on youth, like those based on age in general, do not trigger heightened scrutiny for equal protection purposes. The appeals court expressed dissatisfaction about the case in the opening paragraph of its opinion: "no one is very happy about the events that led to this litigation. A twelve-year-old girl was arrested, searched, and handcuffed. Her shoelaces were removed, and she was transported in a windowless rear compartment of a police vehicle to a juvenile processing center, where she was booked, fingerprinted, and detained until released to her mother some three hours later—all for eating a single french fry in a Metrorail station." (Juvenile Processing Center, District of Columbia)

U.S. District Court
CONSPIRACY

Hernandez v. Goord, 312 F.Supp.2d 537 (S.D.N.Y. 2004). An inmate brought a pro se civil rights action against state prison employees and the employees moved to dismiss the complaint for failure to provide a short and plain statement of the claim, and for failure to state a claim. The district court granted the motions in part and denied in part. The court held that the inmate's allegations were sufficient to state a claim for conspiracy under § 1983 and that the inmate adequately alleged the personal involvement of a supervisory prison official in an alleged campaign of harassment and retaliation. The court denied qualified immunity for the defendants because their alleged acts violated clearly established law. The inmate alleged that prison employees retaliated against him after he filed a state court action. The inmate claimed that he was subjected to two cell fires, transferred to another prison, and that "bogus" misbehavior reports were filed against him. The inmate had filed previous grievances and litigation against a supervisor at another facility, and alleged that he was harassed and retaliated against by security staff once the supervisor arrived at the facility where he was currently confined. (Sing Sing Correctional Facility, and Green Haven Correctional Facility, New York)

U.S. District Court
FALSE IMPRISONMENT
FALSE ARREST
INVOLUNTARY SERVITUDE
PRETRIAL DETAINEES

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. Appeals Court
SEXUAL ABUSE
EQUAL PROTECTION
HOMOSEXUAL DISCRIMINATION

Johnson v. Johnson, 385 F.3d 503 (5th Cir. 2004). A black homosexual former state prisoner brought a § 1983 action against prison officials, alleging that their failure to protect him from repeated sexual assaults over an 18-month period violated his Eighth Amendment and equal protection rights. The district court denied the defendants' motions and they appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the prisoner's complaint adequately stated a claim for sexual-orientation discrimination, and that the prisoner alleged conduct that would have been unreasonable in light of the law that was clearly established at the time of the alleged events. The prisoner alleged that prison gangs repeatedly raped him and bought and sold him as a sexual slave during his 18-month incarceration. (Allred Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
HARASSMENT

Johnson v. Unknown Dellatifa, 357 F.3d 539 (6th Cir. 2004). A pro se state prisoner brought separate § 1983 actions against various prison officials and staff. The district court dismissed the

actions and the prisoner appealed. The appeals court consolidated the cases, and affirmed. The court held that the prisoner's § 1983 claims against a prison librarian, for allegedly failing to copy documents for his pending court case, was barred by the Eleventh Amendment. The court held that the prisoner's allegations of harassment by a corrections officer, if true, "demonstrated shameful and utterly unprofessional behavior" but did not violate the Eighth Amendment. The prisoner alleged that the officer banged and kicked on his door, threw his food tray through the slot in the cell door, made aggravating remarks to him, growled and snarled at him, behaved in a racially prejudicial manner toward him, and jerked and pulled the him unnecessarily hard when escorting him from his cell. (Marquette Branch Prison, Michigan)

U.S. Appeals Court
SEX OFFENDER
CIVIL COMMITMENT
PRETRIAL
DETAINEES

Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004). A jail detainee brought a civil rights against a sheriff and county for violations of his constitutional rights during the period he was civilly confined awaiting adjudication and eventual commitment under the California Sexually Violent Predator Act (SVPA). The district court entered summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded with instructions. The court held that fact issues as to whether the restrictive conditions of confinement were justified by legitimate, non-punitive interests and were not excessive, precluding summary judgment on the detainee's conditions of confinement claim. The court held that the year-long confinement of the civil detainee who was held in the general criminal population of a county jail pending commitment proceedings, created a rebuttable assumption that the confinement was punitive in violation of the detainee's substantive due process rights. (Sacramento County Jail, California)

U.S. District Court
CIVIL COMMITMENT
SEX OFFENDERS

Laxton v. Watters, 348 F.Supp.2d 1024 (W.D.Wis. 2004). A patient who was civilly detained under Wisconsin's treatment program for sexually violent persons, brought a civil rights suit. The district court entered judgment for the defendants. The court held that requiring a patient to undergo a polygraph examination as a condition to remaining in a particular treatment program did not violate the patient's substantive due process rights. The court noted that while it is a violation of substantive due process to punish civilly-confined patients, they may be subjected to conditions that advance goals such as preventing escape and assuring the safety of others. (Sand Ridge Secure Treatment Center, Wisconsin)

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. (Fed. Bureau of Prisons)

U.S. Appeals Court
HANDICAP
ADA- Americans with Disabilities Act

Miller v. King, 384 F.3d 1248 (11th Cir. 2004). A paraplegic state prisoner brought a § 1983 action alleging Eighth Amendment and Americans with Disabilities Act (ADA) violations. The district court granted summary judgment for the defendants on most of the claims, and following a jury trial entered judgment for a disciplinary hearing officer on the remaining claims. The prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that fact issues, as to whether the prisoner was afforded basic levels of humane care and hygiene, precluded summary judgment on the prisoner's § 1983 claims for monetary damages and injunctive relief under the Eighth Amendment. According to the court, the prisoner was "disabled" within the meaning of ADA and had standing to seek injunctive relief against a prison warden. The prisoner was due to remain in isolation for over eight years as the result of more than 180 disciplinary reports. Able-bodied inmates in disciplinary isolation are housed in less stringent units than the building in which the prisoner was housed. Because of the small cell size in his unit, prison policy calls for beds to 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. District Court
VERBAL HARASSMENT
HARASSMENT

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. Appeals Court
VOTING

Muntaqim v. Coombe, 366 F.3d 102 (2nd Cir. 2004). A convicted felon imprisoned in New York brought a pro se complaint alleging that New York's felon disenfranchisement statute violated the Voting Rights Act. The district court granted summary judgment for the defendants and the felon appealed. The appeals court affirmed, finding that the Voting Rights Act did not apply to the New York statute that disenfranchised currently incarcerated felons and parolees. (Shawagunk Correctional Facility, New York)

U.S. Appeals Court
RACIAL DISCIMINATION

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)

U.S. District Court
CIVIL COMMITMENT
SEX OFFENDER CONDITIONS

Wilson v. Watters, 348 F.Supp.2d 1031 (W.D.Wis. 2004). A patient confined as a sex offender brought an action alleging he was deprived of his due process rights. The district court denied the patient's motion. The court found that the use of a polygraph examination as part of a sex offender treatment program did not violate the patient's due process rights, even if the patient was subject to more restrictive conditions solely because of his refusal to participate in the polygraph examination. The court held that even if the treatment learning plan offered to the sex offender was inappropriate, the sex offender's due process rights were not violated. According to the court, confining the sex offender at a state detention facility did not violate his due process rights, absent allegations that his conditions of confinement were different from those imposed on any other civil detainee at the detention facility. (Wisconsin Resource Center)

U.S. Appeals Court
SELF INCRIMINATION
SEX OFFENDER

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
ADA- Americans with Disabilities Act

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
FAILURE TO PROTECT
EQUAL PROTECTION
RACIAL DISCRIMINATION

Brown v. Budz, 398 F.3d 904 (7th Cir. 2005). A white detainee at a state facility for sexually violent persons brought a § 1983 action against officials and employees, alleging failure to protect him from beatings administered by an African-American resident of the facility. The detainee asserted violations of due process and equal protection. The district court granted the defendants' motion to dismiss and the detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the officials' alleged actions of allowing a resident with an allegedly known propensity toward attacking Caucasians unsupervised access to the facility's dayroom where the beatings took place, constituted a "substantial risk of harm." The court noted that the detainee did not have to show that he had informed officials of a threat, or that the officials were aware of a specific threat to the detainee rather than a general threat to Caucasian residents. The court found that the detainee stated an equal protection claim against facility employees by alleging that they intentionally treated him differently from similarly-situated African-American residents, failed to protect him from an attack, and failed to investigate the attack. (Illinois Department of Human Services, Sexually Violent Persons and Detention Facility)

U.S. Appeals Court
ADA- Americans with Disabilities Act
RA-Rehabilitation Act

Burger v. Bloomberg, 418 F.3d 882 (8th Cir. 2005). Following the death of an inmate, an action was brought under the Rehabilitation Act alleging inadequate medical care of the inmate's diabetes. The district court granted summary judgment in favor of the defendants. The personal representative of the inmate's estate appealed. The appeals court affirmed. The court held that "we agree with two other circuits that have recently concluded [that] a lawsuit under the Rehab[ilitation] Act or the Americans with Disabilities Act (ADA) cannot be based on medical treatment decisions." (South Dakota Department of Corrections)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER

Carty v. Nelson, 426 F.3d 1064 (9th Cir. 2005). A petitioner was serving his first two-year civil commitment as a sexually violent predator (SVP) when his civil commitment was affirmed on direct appeal. The petitioner sought habeas corpus relief. The district court denied the petition because the state's second recommitment petition was pending. The petitioner was released when the second state recommitment petition was denied and he was ordered unconditionally released. The district court held that the release of the petitioner from SVP commitment did not render the petition moot. The court found that the petitioner did not have Sixth Amendment confrontation rights in a civil commitment proceeding, and that the use of documentary evidence from a probation report, in lieu of live testimony, did not violate due process. (Wisconsin)

U.S. District Court
VERBAL HARASSMENT
SEXUAL HARASSMENT

Collins v. Graham, 377 F.Supp.2d 241 (D.Me. 2005). An inmate brought a civil rights action against corrections officers and their supervisors alleging that the officers subjected him to sexual harassment. The district court held that the inmate failed to state a claim for sexual harassment with allegations that the officers made statements to him referring to sexual acts and tried to grab him in a sexual manner. According to the court, an attempted touching, with no accompanying allegation of pain or injury, cannot support an inmate's claim of constitutional injury. The court found that the inmate failed to state a claim for supervisory liability. The court also found that the inmate's allegation that an officer exposed his testicles to him did not meet the "unnecessary and wanton infliction of pain" standard necessary to support a § 1983 claim. The court noted that sexual abuse or harassment of an inmate by a correctional officer can never serve a legitimate penological purpose and may well result in severe physical and psychological harm, and that in some circumstances such abuse can constitute the unnecessary and wanton infliction of pain that is forbidden by the Eighth Amendment. (Maine Correctional Center)

U.S. Appeals Court
CONSPIRACY
FAILURE TO PROTECT

Copeland v. County of Macon, Ill., 403 F.3d 929 (7th Cir. 2005). A former pretrial detainee who had been beaten by another inmate sued a county seeking indemnification under the "scope of employment" provision of the state's local government tort immunity statute. The detainee alleged that a county correctional officer recruited and encouraged other inmates to commit the

beating. The district court jury awarded the detainee $400,000 and the county appealed. The appeals court reversed, finding that the corrections officer was not acting within the scope of his employment within the meaning of the tort immunity statute, and that the county jail, not the citizens of the county, was the officer's employer. (Macon County Jail, Illinois)

U.S. Appeals Court
RELIGION

Cutter v. Wilkinson, 423 F.3d 579 (6th Cir. 2005). State prisoners sued prison officials in three separate actions, alleging that each prisoner was denied the right to practice his religion due to unwarranted concerns about security, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The actions were consolidated and the district court denied the defendants' motion to dismiss. The defendants appealed and the appeals court reversed and remanded. The U.S. Supreme Court reversed and remanded. On remand, the appeals court held that it was a proper exercise of Congressional power under the spending clause to make compliance with RLUIPA a condition for states which receive federal funds for prison activities or programs. The court noted that the RLUIPA furthered the general welfare of the United States, and the language of RLUIPA made it clear to states that applied for federal funding for prison programs that they were subject to RLUIPA. According to the court, the conditions set forth in RLUIPA were reasonably calculated to address the federal government's interest in the rehabilitation of state prisoners. (Ohio Department of Rehabilitation and Correction)

U.S. Appeals Court
SEX OFFENDER CLASSIFICATION

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. Appeals Court
TELEPHONE COSTS

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
RACIAL DISCRIMINATION
WORK

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. Appeals Court
PAROLE
VICTIMS

Jackson v. Jamrog, 411 F.3d 615 (6th Cir. 2005). A state prisoner filed a petition for a writ of habeas corpus challenging the constitutionality of a Michigan statute that permits prosecutors and crime victims to appeal decisions to grant parole, but which provides no equivalent right of appeal to state prisoners who are denied parole. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that differentiating between prisoners and non-prisoners had a rational basis and the statute was rationally related to the legitimate state goal of eliminating frivolous prisoner lawsuits. The court noted that prisoner claims had inundated the judicial system in a manner that non-prisoner claims had not. (Michigan)

U.S. District Court
FALSE IMPRISONMENT
WORK

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
SEXUAL HARASSMENT

K.M. v. Alabama Dept. of Youth Services, 360 F.Supp.2d 1253 (M.D.Ala. 2005). Former juvenile detainees sued the Alabama Department of Youth Services (DYS), a former DYS employee, and others under § 1983 and state law, alleging that they were sexually and physically assaulted and harassed while in DYS custody. The former employee moved for summary judgment and the district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the employee violated a detainee's due process right to bodily integrity, and whether a detainee suffered emotional distress so severe that no reasonable person could be expected to endure it, as the result of a sexual assault by the employee. The court noted that even if a juvenile detainee had serious mental health problems before an employee allegedly inserted his finger into her vagina, that fact would not preclude a finding that any mental distress she experienced was caused by the employee, for the purposes of the Alabama tort of outrage. The court found that the employee was not protected by state-agent immunity under Alabama law because the alleged acts were not committed in the performance of his job-related duties. (Department of Youth Services, Chalkville Campus, Alabama)

U.S. District Court
SEARCH
SEXUAL HARASSMENT

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. District Court
SEXUAL HARASSMENT
VERBAL HARASSMENT
PLRA-Prison Litigation Reform Act

Ornelas v. Giurbino, 358 F.Supp.2d 955 (S.D.Cal. 2005). A prisoner filed a pro se in forma pauperis action against several correctional officials under § 1983, alleging that an officer had attempted to solicit sexual favors in exchange for special consideration. The district court dismissed. The court held that the prisoner failed to exhaust administrative remedies, as required under the Prison Litigation Reform Act (PLRA). The court found that the prisoner failed to state an Eighth Amendment action based on sexual misconduct, absent any allegation of physical injury, and that the prisoner failed to state a claim based on alleged verbal harassment. (Centinela State Prison, California)

U.S. District Court
FALSE IMPRISONMENT

Perez-Garcia v. Village of Mundelein, 396 F.Supp.2d 907 (N.D.Ill. 2005). A county jail detainee brought an action against a county and sheriff under § 1983 alleging violation of his due process rights, and asserting claims for false imprisonment. The district court granted the defendants' motion to dismiss in part, and denied it in part. The court held that the detainee's complaint against the sheriff sufficiently stated a claim for deprivation of due process rights, where the detainee alleged he was jailed for nearly one month over his vigorous and repeated protests that he was the wrong person, that he provided jail personnel with his identification card and repeatedly told them he was not the named suspect, that his physical appearance did not match the suspect's description, and that his detention continued for a day after a court ordered his release. According to the court, the detainee sufficiently alleged that a policy, practice or custom of the sheriff's department caused the alleged deprivation, and that the sheriff was responsible for setting and supervising jail policies and procedures that did not require confirmation of the detainee's identity. (Lake County Jail, Illinois)

U.S. Appeals Court
RACIAL DISCRIMINATION

Phillips v. Gordich, 408 F.3d 124 (2nd Cir. 2005). An inmate brought a pro se civil rights action against several correctional officials. The district court dismissed the case and the inmate appealed. The appeals court vacated and remanded, finding that the inmate stated a claim for equal protection violations by alleging that he and other minorities were subjected to disparate treatment because of their race. The district court had dismissed the action because the inmate had failed to adequately separate and number his factual allegations, provide a caption or otherwise list the defendants to the action, and clearly state what causes of action he was asserting. The appeals court held that although the inmate's allegations were not "neatly parsed" and included a great deal of irrelevant detail, the complaint named the defendants and contained three clearly enumerated claims and a prayer for relief. The black inmate alleged that he was denied contact visits and that he was subjected to a pattern of harassment because of his race. The inmate's complaint "contained a litany of allegations purporting to demonstrate that black inmates were treated differently than whites vis-à-vis restriction of visitation." (Upstate Correctional Facility, New York)

U.S. District Court
DISCIPLINE
SEXUAL ABUSE

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. The court held that officer's alleged sexual assault constituted cruel and unusual punishment and that the officer as not entitled to qualified immunity. The court held that the officer's alleged retaliatory planting of evidence and retaliatory filing of a misbehavior

report was in violation of the First and Fourteenth Amendment. 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. Appeals Court
HARASSMENT
USE OF FORCE

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 appeals court held that the immediate transfer of the prisoner to a restricted area within the prison after the prisoner killed another inmate did not violate his due process rights, given the exigent circumstances posed by the need to isolate him for his own sake and for the protection of other inmates. The court found that the prisoner was not deprived of liberty without due process when he was detained in a restricted area for 40 days without a hearing. The court noted that the prisoner's disciplinary hearing had been indefinitely deferred and there was a need to isolate the prisoner from the general population pending a criminal investigation. 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. The court also found no Eighth Amendment violation arising from the alleged harassment by officers, which included making threats, showing discourtesy, using epithets, lodging false petty charges, and slamming the prisoner's cell door while he was being held in isolation. (N.H.State Prison)

U.S. Appeals Court
CONDITIONS
DISCIPLINE
PRETRIAL
DETAINEE

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 that a hearing officer deprived the detainee of due process because she was not an impartial decision-maker. The officer testified that she declined to interview an alibi witness based on her preconceived belief that the witness would lie, and the officer rushed to impose sanctions on the detainee despite having been asked by officials to withhold judgment pending the completion of a parallel investigation into the incident. 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
ADA- Americans with Disabilities Act
RA- Rehabilitation Act

Tanney v. Boles, 400 F.Supp.2d 1027 (E.D.Mich. 2005). A former inmate brought an action against his case manager at a state correctional facility, alleging violations of his due process and free speech rights under § 1983, and violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court held that the former inmate's § 1983 claim for declaratory relief was moot and that the inmate failed to state a due process claim. The court found that summary judgment was precluded by fact issues as to whether the deaf inmate was denied reasonable access to a device which allowed him to communicate via the telephone, and whether a state prison officials' policy of keeping such a device locked in her office served a legitimate penological interest. (Charles Egeler Reception and Guidance Center, Jackson, Michigan)

U.S. District Court
CIVIL COMMITMENT
CONDITIONS
SEARCH
TRANSFER

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
CRIPA- Civil Rights of Institutionalized Persons Act

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
PRETRIAL DETAINEE SEARCH

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
TRANSFERS

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)

2006

U.S. District Court
ADA- Americans with Disabilities Act

Arce v. O'Connell, 427 F.Supp.2d 435 (S.D.N.Y. 2006). A purportedly hearing-impaired inmate brought a pro se suit against employees of a corrections department, alleging that they violated his rights under the Americans with Disabilities Act (ADA), as well as the Eighth and Fourteenth Amendments, by failing to provide reasonable accommodations for his hearing impairment and retaliating against him after he filed grievances regarding the lack of such accommodations. The defendants moved for summary judgment and the court dismissed the case. The district court held that the inmate was not a member of the class protected by a consent decree addressing the treatment of deaf or hard-of-hearing inmates and thus, he lacked standing to move for contempt alleging violations of the decree. The court found that to the extent the inmate suffered from a hearing loss, it was not such as would prevent him from participating fully in "activities, privileges, or programs" as required for him to come within the protections of the consent decree. (New York State Department of Correctional Services)

U.S. Appeals Court
CIVIL COMMITMENT

Armstrong v. Guccione, 470 F.3d 89 (2nd Cir. 2006). A prisoner incarcerated for civil contempt for refusing to comply with an order, sought habeas corpus relief. The district court denied the prisoner's motion for bail and the prisoner appealed. The appeals court affirmed, remanded, and ordered the case to be reassigned. The court held that the Non-Detention Act did not eliminate the lower courts' inherent power to order coercive civil confinement, and implicitly authorized

coercive confinement in the face of civil contempt. The court found that civil confinement only becomes punitive, for the purposes of a due process analysis, when it loses the ability to secure compliance. The court held that a seven-year length of imprisonment for refusing to produce corporate records and property, so as to comply with an order issued in a civil securities fraud action, did not violate the prisoner's due process rights, where the property in question had a "life-altering" value of $15 million, such that his refusal to comply indicated that he was willing to suffer jail time in hopes of ending up in possession of the property. The court opened it's opinion with the following statement: *"It has been said that a civil contemnor who is incarcerated to compel compliance with a court order holds the key to his prison cell: Where defiance leads to the contemnor's incarceration, compliance is his salvation."* (Metropolitan Correctional Center, Federal Bureau of Prisons, New York)

U.S. District Court
FALSE IMPRISONMENT

Atkins v. City of Chicago, 441 F.Supp.2d 921 (N.D.Ill. 2006). A former inmate sued the Illinois Department of Corrections and state officials under § 1983, charging them with having violated his constitutional rights by his wrongful month-long detention at a correctional center. The district court held that the officials to whom the arrestee protested that he had been misidentified were not entitled to qualified immunity, where the inmate claimed that his constantly reasserted claims of misidentification were never investigated. The court noted that his date of birth, physical appearance and Social Security number differed from that of the wanted suspect, and the officials had ready access to both parties' fingerprints, such that it would have been easy to confirm that he was not the man named in a warrant. (Stateville Correctional Center, Illinois)

U.S. District Court
RA-Rehabiliation Act
ADA- Americans with Disabilities Act

Bircoll v. Miami-Dade County, 410 F.Supp.2d 1280 (S.D.Fla. 2006). A deaf motorist brought an action against a county, alleging that his arrest for driving under the influence (DUI) and subsequent detention violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA). The motorist alleged that throughout the arrest process, the county failed to establish effective communication because it did not provide him with any auxiliary aids as required by the ADA and RA. The county moved for summary judgment and the district court granted the motion. The court held that the motorist's arrest for driving under the influence (DUI) and his subsequent stationhouse detention was not covered by the ADA or the Rehabilitation Act (RA). According to the court, the motorist's arrest was due to his erratic and suspicious driving, not his disability, and following his arrest the police merely communicated the breath test consent form to the motorist, who foreclosed further questioning by requesting an attorney through his driver's rights card. The court held that the detention of the motorist following his arrest for driving under the influence (DUI) did not violate the Rehabilitation Act (RA), where the motorist was not detained because of his disability, but instead was detained because Florida law required a DUI arrestee to be detained for at least eight hours. The court found that a county police officer did not intentionally discriminate, act in bad faith, or act with deliberate indifference during the initial stop and arrest of the motorist, as required to support the award of compensatory damages under the Rehabilitation Act (RA). As the officer became aware of the motorist's disability, the officer allowed the motorist to get out of his car so they could speak face to face, and attempted to communicate through sign language. The officer believed in good faith that effective communication was established because the motorist responded to him, and the motorist read the implied consent form. The court found that the detention of the deaf motorist in solitary confinement following his arrest did not rise to the level of intentional discrimination or deliberate indifference to the motorist's disability, as required to support the award of compensatory damages under the Rehabilitation Act (RA). Corrections facility officers believed that their communication with the motorist was effective and they detained the motorist in solitary confinement as a good faith protective measure, not as a discriminatory act. (Miami-Dade County, Florida)

U.S. Appeals Court
SEXUAL HARASSMENT

Boxer X v. Harris, 437 F.3d 1107 (11th Cir. 2006). A prisoner brought a civil rights action against a female officer, who allegedly made him strip and masturbate for her enjoyment. The district court dismissed the case and the prisoner appealed. The appeals court held the prisoner stated a § 1983 claim for violation of his privacy rights but that the officer's alleged solicitation of his manual masturbation, even under the threat of reprisal, did not present more than *de minimis* injury and therefore did not give rise to a claim under the Eighth Amendment. (Smith State Prison, Glennville, Georgia)

U.S. District Court
RA-Rehabilitation Act
HANDICAP
MEDICAL CARE
ADA- Americans with Disabilities Act

Degrafinreid v. Ricks, 417 F.Supp.2d 403 (S.D.N.Y. 2006). A deaf inmate sued the superintendent of a state correctional facility and other officials, claiming violation of his constitutional and statutory rights when his hearing aid was confiscated during a search of his cell and then destroyed. The district court held that the inmate stated a claim for monetary damages against the state under the Americans with Disabilities Act (ADA), through allegations that constituted a showing of deliberate indifference to the inmate's medical condition in violation of the Eighth Amendment. The inmate claimed that officials destroyed his hearing aid during a search of his cell, knowing he was deaf, and delayed replacement for many weeks. According to the court, because the Rehabilitation Act (RA) was enacted pursuant to the Spending Clause of Article I, Congress can require states to waive their sovereign immunity as a condition of accepting federal

funds. New York State's continued acceptance of funding, under the Rehabilitation Act, resulted in a waiver of sovereign immunity as to claims of the deaf prison inmate. (Upstate Correctional Facility, New York)

U.S. District Court
SEX OFFENDERS

Doe v. Pataki, 427 F.Supp.2d 398 (S.D.N.Y. 2006.) Sex offenders filed a class action challenging the retroactive application of the registration and community notification provisions of the New York Sex Offender Registration Act. After entry of a stipulation of settlement limiting the registration period for most class members, the state legislature passed an amendment extending the registration periods. Class members moved to enforce the stipulation. The district court held that it had jurisdiction to enforce the stipulation of settlement, the Eleventh Amendment did not bar the court from enforcing the stipulation; and the court would enforce stipulation's provisions. (New York)

U.S. District Court
ADA- Americans with Disabilities Act

Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Corr'l Facility, New York)

U.S. District Court
ADA- Americans with Disabilities Act

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. District Court
SEX OFFENDER
PAROLE
SELF INCRIMIN-ATION

Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). A state inmate filed a petition for a writ of habeas corpus challenging a state parole board's denial of parole. The district court held that requiring the inmate to admit to the sexual crimes for which he was convicted, as a condition for completing a rehabilitation program, did not violate his Fifth Amendment right against self-incrimination, nor the inmate's substantive due process rights or the inmate's First Amendment right not to be compelled to speak. The court found that the requirement did not constitute sufficient compulsion to implicate the inmate's Fifth Amendment right against self-incrimination, even though the inmate's chance at parole was diminished if he did not successfully complete the program, where the inmate's failure to accept responsibility for his sexual behavior did not automatically preclude him from parole. (State Correctional Institution, Houtzdale, PA)

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 Department of Corrections)

U.S. Appeals Court
VOTING

Hayden v. Pataki, 449 F.3d 305 (2nd Cir. 2006). Black and Latino inmates and parolees brought an action against the New York Governor, Chairperson of the Board of Elections, and Commissioner of Corrections to challenge, as a violation of the Voting Rights Act (VRA), a statute disenfranchising incarcerated and paroled felons. The district court dismissed the claim. The inmates and parolees appealed and en banc review was granted. The appeals court affirmed and remanded, finding that the VRA prohibition against voting qualifications or prerequisites that resulted in a denial or abridgement of the right to vote on account of race or color did not apply to vote denial and dilution claims. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
CLASSIFICATION

Lindell v. Houser, 442 F.3d 1033 (7th Cir. 2006). A white-supremacist inmate brought an action alleging that prison official violated the Eighth Amendment by housing him with a black inmate. The district court entered summary judgment in favor of the official and the inmate appealed. The court of appeals held that the official did not violate the inmate's Eighth Amendment rights by placing him in a cell with a black inmate, even though the official knew of the black inmate's involvement with a gang and the white inmate's expression of fear. The court found that the official did not have reason to believe that the white inmate was at a serious risk since eighteen months had passed without incident after the cellmates' initial fight and nothing indicated specific threats had been made by the black inmate or other members of the gang. The court noted that the inmate had no constitutional right to be housed with members of his own race, culture, or temperament. The court held that the inmate was not entitled to a court-appointed lawyer to help him prosecute his case against prison officials, noting that the inmate was experienced in litigation, and that any difficulty prosecuting his case was largely caused by the inmate's choice to pursue other cases at the same time. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
WORK

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
CIVIL
COMMITMENT

Michau v. Charleston County, S.C., 434 F.3d 725 (4th Cir. 2006). A former state prison inmate who was being detained under a state's Sexually Violent Predator Act (SVPA) brought civil actions. The district court dismissed the complaints for failure to state a claim and the inmate appealed. The appeals court affirmed. The court held that the former inmate was not a "prisoner" for the purposes of the Prison Litigation Reform Act (PLRA) and therefore his complaint was not subject to the PLRA's screening requirements. The court noted that the former inmate was under "civil detention" not "criminal detention." The court held that the former inmate's complaint failed to state a claim for damages for denial of access to a law library, where the complaint did not explain how he was injured by any limitations on his access to the law library. (Charleston County Detention Center, South Carolina)

U.S. Appeals Court
VOTING

Muntaqim v. Coombe, 449 F.3d 371 (2nd Cir. 2006). A felon filed an action alleging that New York's felon disenfranchisement statute violated the Voting Rights Act. The district court granted the prison officials' motion for summary judgment, and the felon appealed. The appeals court held

that felon was not a resident of New York and thus did not have standing to challenge New York's felon disenfranchisement statute as a violation of the Voting Rights Act. The court noted that even though the felon had been incarcerated in New York prisons for the past 30 years, the inmate was a California resident before he was incarcerated in New York, he was never resident of New York, and he disavowed any intention to become a resident of New York in future. (Shawangunk Correctional Facility, New York)

U.S. District Court
CONSPIRACY
SEXUAL ABUSE
FAILURE TO PROTECT

Newsome v. Lee County, Ala., 431 F.Supp.2d 1189 (M.D.Ala. 2006). A female county jail detainee who had been raped by three inmates, sued a county and employees, alleging violation of her federal and state rights. The district court dismissed the case in part, and denied dismissal in part. The court held that the officers were not entitled to qualified immunity on the claim that they retaliated against the detainee for her efforts to report the rape. The court found that the detainee stated a Fourteenth Amendment due process violation against the officer who placed the detainee in a cell with male inmates, but against no other jail personnel. The court also found valid claims of conspiracy, and conspiracy to block the opportunity to report the rape, under § 1983 on the part of officer who placed the detainee in the cell with the male inmates. After the incident, officers allegedly cut off the detainee's access to phones and visitors and threatened that there would be negative consequences if she persevered with her charges. (Lee County Jail, Alabama)

U.S. District Court
EQUAL PROTECTION

Olibas v. Gomez, 481 F.Supp.2d 721 (W.D.Tex. 2006). Bail bondsmen sued a sheriff and county, alleging breach of a prior settlement agreement and new violations of § 1983, in violation of their First and Fourteenth Amendment rights under the United States Constitution, and breach of their right of free speech under the Texas Constitution. The sheriff moved to dismiss. The district court denied the motion. The court held that the bail bondsmen stated a § 1983 claim for a First Amendment violation against the sheriff, despite his argument that they had failed to identify a variety of details. According to the court, the Texas Constitution protected the right to earn a living by writing bail bonds, and thus, the bail bondsmen's ability to have their bail bonds accepted at a county jail was a property or liberty interest protected by the Fourteenth Amendment's Due Process Clause. The bondsmen alleged that the sheriff allowed other bonding companies to continue writing bail bonds in the county while denying such privileges to them. (Reeves County, Texas)

U.S. District Court
PAROLE

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?* (Pennsylvania Board of Pardons)

U.S. District Court
JUVENILE
HARASSMENT
HOMOSEXUALS
SEXUAL HARASS-MENT

R.G. v. Koller, 415 F.Supp.2d 1129 (D.Hawai'i 2006). Three juveniles who either identified themselves as, or were perceived to be, lesbian, gay, bisexual, or transgender and who had been confined at a state juvenile correctional facility brought claims against the facility alleging due process, equal protection, Establishment Clause, and access to counsel violations. The district court granted the juveniles' motion for a preliminary injunction in part, and denied in part. The court held that the juveniles had standing to seek a preliminary injunction preventing the facility officials from engaging in unconstitutional conduct and requiring them to implement policies and procedures to ensure their safety at the facility. Although none of the juveniles were incarcerated at the time the complaint was filed, the court found that enjoining certain unconstitutional conduct and requiring officials to implement policies and procedures to remedy those conditions would remedy the juveniles' injury, and, the juveniles showed a likelihood of repetition of the injury given that each of the juveniles had been incarcerated at the facility two to three times over a relatively short period of time, each had been released only to return to the facility a short time later, and the juveniles' experiences indicated that, at the time the complaint was filed, each

juvenile was likely to return to the facility. The court found that the facility's adoption of a youth rights policy providing that youth should not be discriminated against on the basis of sexual orientation did not render moot the juveniles' claims for injunctive relief from sexual orientation harassment, absent evidence, aside from the policies themselves, that the facility had altered its treatment of its lesbian, gay, bisexual, or transgender wards. According to the court, the facility's use of isolation to "protect" its lesbian, gay, bisexual, or transgender wards was not within the range of acceptable professional practices and constituted punishment in violation of their due process rights. The court found that such practices were, at best, an excessive and therefore unconstitutional, response to the legitimate safety needs of the institution. The court held that officials at the facility acted with deliberate indifference in violation of due process in allowing pervasive verbal, physical, and sexual abuse to persist against lesbian, gay, bisexual, or transgender juveniles. The juveniles complained of a relentless campaign of harassment based on their sexual orientation that included threats of violence, physical and sexual assault, imposed social isolation, and near constant use of homophobic slurs. (Hawai'i Youth Correctional Facility)

U.S. District Court
MILITARY FACILITY
TORTURE

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 executive members 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
CIVIL COMMITMENT
SEX OFFENDER

Rose v. Mayberg, 454 F.3d 958 (9th Cir. 2006). A sex offender who had been civilly committed to a state hospital as a sexually violent predator (SVP), filed a petition for a writ of habeas corpus after exhausting claims relevant to his petition in state court. The district court denied the petition and the offender appealed. The appeals court affirmed. The federal appeals court held that the decision by a state appellate court-- that due process did not require a jury in a civil commitment proceeding under the Sexually Violent Predator Act (SVPA) to determine if a sex offender was completely unable to control his behavior-- was not an objectively unreasonable application of the decisions of United States Supreme Court, and therefore the sex offender was not entitled to federal habeas relief. According to the court, only some showing of abnormality was required, that made it difficult, if not impossible, for a dangerous person to control his dangerous behavior. (California Department of Mental Health)

U.S. Appeals Court
SEX OFFENDER
CIVIL COMMITMENT

Senty-Haugen v. Goodno, 462 F.3d 876 (8th Cir. 2006). A civilly-committed sex offender brought an action against the Commissioner of the Minnesota Department of Human Services, other Department officials, and sex offender program employees, alleging violations of federal and state law for being placed in isolation, receiving inadequate medical attention, and being retaliated against. The district court entered summary judgment in favor of the defendants and the offender appealed. The appeals court affirmed. The court held that placement of the civilly-committed sex offender in isolation because of rule infractions did not infringe on his procedural due process rights, given that his commitment was indefinite, that he received notice and had the right to be heard, that the decision to use isolation was a discretionary decision by state officials, and that the State had a vital interest in maintaining a secure environment. The court noted that a civilly-committed sex offender was entitled, under the Due Process Clause, to more considerate treatment and conditions of confinement than a prison inmate. The court found that the fact that the officials implemented a new isolation policy geared toward the unique security problems caused by the conduct of the offender did not amount to a procedural due process violation. The court held that the offender did not receive inadequate medical treatment in violation of his due process rights, in that the alleged delays in treatment did not worsen his conditions, he provided no expert evidence that the treatment he received was inadequate, and staff was not unreasonable in requiring him to move away from the door of his room before he could be treated for an injured leg, since they were unable to ascertain the extent of his injury until they could see that it was safe for them to enter. 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. The court found that the officials' act of leaving lights on in his protective isolation unit was not in retaliation for him filing grievances and contacting his attorney, in violation of his First Amendment rights. (Minnesota Sex Offender Program, Minnesota Department of Human Services)

U.S. District Court
CRIPA- Civil Rights of Institutionalized Persons Act
TRANSFERS

Siggers-El v. Barlow, 433 F.Supp.2d 811(E.D.Mich. 2006). A state inmate filed a § 1983 action alleging that a prison official transferred him in retaliation for his exercising his First Amendment rights. After a jury verdict in the inmate's favor, the official filed a motion for a new trial, and the inmate moved for costs and attorney fees. The district court held that the Civil Rights of Institutionalized Persons Act (CRIPA) that prohibited inmates from recovering mental or emotional damages in the absence of a the physical injury, did not bar the inmate's claim for emotional damages and that evidence supported the award of punitive damages. The court applied only $1 of the inmate's damages award to his attorney fee award. The court noted that a jury may be permitted to assess punitive damages in a § 1983 action when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless disregard or callous indifference to the federally protected rights of others. According to the court, the jury's award of punitive damages against the prison official was supported by evidence that the official transferred the inmate in retaliation for the inmate's exercise of his First Amendment free speech rights in complaining to the official's superiors about the official's misconduct, even though the official was aware that the transfer would prevent the inmate from seeing his attorney, from paying his attorney, and from seeing his emotionally-disabled daughter. (Michigan Department of Corrections)

U.S. District Court
CIVIL COMMITMENT
SMOKING

Thiel v. Nelson, 422 F.Supp.2d 1024 (W.D.Wis. 2006). Patients who were involuntarily committed to a mental health facility pursuant to a state's sexually violent persons statute filed state court actions challenging a smoking ban enacted at the facility. After removal to federal court, the patients moved to remand, and the officials moved to dismiss the complaint. The district court dismissed the complaint. The court held that the decision to completely ban smoking at the facility was rationally related to legitimate state interests of improving patients' health and safety, reducing fire hazards, maintaining clean and sanitary conditions, and reducing complaints and the threat of litigation from patients who did not smoke. The court found that the smoking ban did not violate the patients' equal protection rights, even if another state detention facility continued to permit its patients to smoke. The court noted that, unlike criminally confined offenders who may be subject to punishment as long as it is not cruel and unusual under the Eighth Amendment, persons who are civilly confined may not be punished. According to the court, involuntarily committed patients may be subjected to conditions that advance goals such as preventing escape and assuring the safety of others. The court also found that the patients were not deprived of their due process right to adequate treatment as result of state's decision to completely ban smoking at facility. (Sand Ridge Secure Treatment Center, Wisconsin)

U.S. District Court
ADA- Americans with Disabilities Act

Tucker v. Hardin County, 448 F.Supp.2d 901 (W.D.Tenn. 2006). Deaf detainees and their deaf mother sued a county and a city, alleging violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a county court did not violate the ADA's Title II, which prohibits discrimination in public services, by asking the deaf mother to serve as interpreter for her deaf sons at their plea hearing, despite her contention that the request deprived her of her right to participate as a spectator. The court noted that the mother expressed no reservations to the court about serving as an interpreter, that she could have refused the request, and, even if the court were somehow responsible for her service as an interpreter, its request was based on her skill in lip-reading and sign language, not on her disability. According to the court, assuming that overnight incarceration was covered by the ADA's Title II which prohibits discrimination in public services, and assuming that placing a phone call was an "aid, benefit, or service" within the meaning of an ADA regulation prohibiting public entities from providing a disabled person aid, benefit, or service that was not as effective as that provided to others, the county did not violate ADA in using relay operators and notes to allow the deaf detainees to communicate with their mother, rather than providing them with a teletypewriter (TTY) telephone. The court noted that information was transmitted and received, which was the same benefit non-disabled person would have received. While in custody, the two brothers communicated with officers through written notes. The jail was not equipped with a teletypewriter (TTY) telephone. Instead, the officers acted as relay operators, using paper and pencil, as they spoke with an operator acting on their behalf to complete the call, which lasted 45 minutes. (Hardin County Jail, and the City of Savannah Police Department, Tennessee)

U.S. District Court
SEXUAL ABUSE
SEARCH

Turner v. Huibregtse, 421 F.Supp.2d 1149 (W.D.Wis. 2006). An inmate sued a deputy warden and two correctional officers under § 1983, claiming that they violated his rights under the Eighth Amendment when one officer sexually assaulted the inmate during a pat search and the other officers failed to prevent the assault. The defendants moved to dismiss. The district court held that the inmate stated a claim against one officer who allegedly grabbed the inmate's buttocks and fondled his penis during a search, and against a second officer who allegedly held the inmate

and laughed while the first officer grabbed the inmate's buttocks and fondled his penis. The court held that the officers were not entitled to qualified immunity where, at the time of the search, it was clearly established that an otherwise legal search that was conducted in a harassing manner intended to humiliate and inflict psychological pain was unconstitutional. According to the court, if the inmate showed that he was sexually assaulted during the search, but failed to show that he suffered any physical injury, he would not be entitled to compensatory damages but he could be entitled to other forms of recovery, such as nominal and punitive damages. (Wisconsin Secure Program Facility, Boscobel, Wisconsin)

U.S. Appeals Court
SEX OFFENDERS

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)

U.S. District Court
CLASSIFICATION
DISCIPLINE
DUE PROCESS
WORK
RACIAL
DISCRIMINATION

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. The court held that an inmate's allegation that he was transferred to a housing unit with far fewer privileges after filing a civil rights action against the prison officials, in violation of his First Amendment right of access to courts, sufficiently alleged a retaliation claim against the officials, and that a genuine issue of material fact as to the reason for the inmate's transfer to a more restrictive facility precluded summary judgment. (Delaware Department of Correction)

2007

U.S. District Court
WAIVER OF RIGHTS

Avalos v. *Baca*, 517 F.Supp.2d 1156 (C.D.Cal. 2007). A county jail detainee brought an action against a county sheriff and under-sheriff, alleging claims arising out of his over-detention and involuntary waiver of an over-detention claim. The defendants moved for summary judgment and the district court granted the motion. The court held that the defendants did not maintain an unconstitutional policy, practice, or custom of over-detention and that the sheriff and under-sheriff were not individually liable for the detainee's over-detention under § 1983. According to the court, evidence demonstrated that only 0.4 percent of persons released by the department during the relevant time period were over-detained, the department had taken steps to reduce the number of over-detentions in recent years, and the total number of over-detentions by the department had dramatically decreased over time. The court noted that the detainee had no freestanding constitutional right to be free of a coercive waiver of rights and that the detainee failed to establish that the county sheriff and others conspired to violate his constitutional rights. A member of the department's risk management team had approached the detainee and offered him $500 if he would release all claims. (Los Angeles County Sheriff's Department, California)

U.S. Appeals Court
CIVIL COMMITMENT
ACCESS TO COURT
MILITARY FACILITY

Bismullah v. *Gates*, 503 F.3d 137 (D.C. Cir. 2007). Eight foreign nationals detained at Guantanamo Bay Naval Base in Cuba petitioned for review of the determination by the Combatant Status Review Tribunal (CSRT) that they were enemy combatants. The detainees and government each proposed the entry of protective orders, the detainees moved to compel discovery, and the government moved to treat seven detainees who had filed a joint petition as though each had filed a separate petition. The appeals court ordered the government to provide the detainees' counsel access to classified information not presented during the determination process. The government moved for rehearing. The appeals court denied the motion, finding that the government was required to provide the court with all reasonably available relevant information in its possession, and that the detainees' counsel were entitled to access to classified information. (Naval Station at Guantánamo Bay, Cuba)

U.S. District Court
PROGRAMS
EQUAL PROTECTION

Boulware v. *Federal Bureau of Prisons*, 518 F.Supp.2d 186 (D.D.C. 2007). A federal prisoner brought a pro se action against the Bureau of Prisons (BOP) and various BOP officials in their official and individual capacities, seeking to compel them to provide the prisoner with some of the marketable vocational opportunities provided to similarly situated offenders housed in other federal facilities. The defendants moved to dismiss and the court granted the motion. The court held that the court lacked subject matter jurisdiction to hear the Administrative Procedure Act (APA) claim. The court found that the prisoner failed to state a claim against individual BOP officials. According to the court, the prisoner did not have a liberty interest to participate in vocational programs of his choice as required to sustain a due process claim and the prisoner could not sustain an equal protection claim. The court held that the BOP's failure to provide additional programs did not violate the prisoner's right to participate in programs. According to the court, the unavailability of a program at a particular prison is not an atypical deprivation of rights in violation of the due process clause, but rather merely leaves the prisoner with the normal attributes of confinement. (United States Bureau of Prisons' Rivers Correctional Institution ("RCI") in Winton, North Carolina)

U.S. District Court
EQUAL PROTECTION
SEARCH

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. Appeals Court
FAILURE TO PROTECT

Burella v. *City of Philadelphia*, 501 F.3d 134 (3rd Cir. 2007). A wife who was shot by her husband brought a § 1983 action against police officers and a city, alleging due process and equal protection violations in their failure to enforce restraining orders and protect her from her husband. The district court denied the officers' motion for summary judgment on the ground of qualified immunity, and the officers appealed. The appeals court reversed and remanded, holding that: (1) the wife did not have a procedural due process right to have officers enforce the restraining orders by arresting the husband when he violated the orders; (2) the wife did not have a cognizable claim against the officers for violation of her right to substantive due process on the theory of a state-created danger; and (3) the officers did not violate the wife's right to equal protection of the laws. (Philadelphia Police Department, Pennsylvania)

U.S. District Court
ACCESS TO COURT
CONSPIRACY
NEGLIGENCE

Bush v. *Butler*, 521 F.Supp.2d 63 (D.D.C. 2007). An inmate sued two attorneys, an investigative reporter, a civil liberties organization, and unknown defendants, alleging that the defendants engaged in a conspiracy to deprive him of his civil rights and failed to prevent a conspiracy in violation of his civil rights. The inmate also asserted state-law claims for legal malpractice, negligent misrepresentation, constructive fraud, breach of contract, breach of implied warranty, civil conspiracy, intentional infliction of emotional distress, and breach of fiduciary duty. The defendants filed motions to dismiss. The district court dismissed the case. The court held that the inmate failed to sufficiently allege the existence of a conspiracy to deprive him of his civil rights when he asserted that the defendants agreed to punish him by interfering with his access to the courts, breaching their contract with him, and making fraudulent misrepresentations. The court noted that the inmate failed to describe the persons involved in the alleged agreement, the nature of the agreement, the particular acts taken to form a conspiracy, and overt acts taken in furtherance of the conspiracy. The court held that it did not have diversity jurisdiction over state-law claims. (Eastern Correctional Institution, Maryland)

U.S. District Court
SEX OFFENDER

Doe v. *Schwarzenegger*, 476 F.Supp.2d 1178 (E.D.Cal. 2007). Registered sex offenders brought an action challenging the constitutionality of California's Sexual Predator Punishment and Control Act (SPPCA), which imposed residency restrictions and global positioning system (GPS) monitoring requirements on registered sex offenders. The offenders moved for a preliminary injunction to enjoin enforcement of the SPPCA's residency and GPS monitoring provisions. The district court denied the motion. The court held that SPPCA did not apply retroactively to offenders who were convicted, paroled, or otherwise released from incarceration prior to the effective date of the statute. The court noted that the SPPCA was a voter initiative that was silent on the issue of retroactivity, and extrinsic sources did not show that voters intended for it to apply retroactively. (California Sexual Predator Punishment and Control Act)

U.S. District Court
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. District Court
CLASSIFICATION
TRANSFER

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. (Maryland Correctional Adjustment Center ["Supermax"])

U.S. District Court
HARASSMENT

Greene v. *Mazzuca*, 485 F.Supp.2d 447 (S.D.N.Y. 2007). A prisoner brought a pro se § 1983 action against prison officials, alleging harassment in violation of the Eighth Amendment. The district court dismissed the case. The court held that the prison employees' alleged actions of yelling at the prisoner, spitting at him, and threatening him with time in a security housing unit (SHU), if proven, did not rise to the level of cruel and unusual punishment. (Fishkill Correctional Facility, New York)

U.S. District Court
MEDICAL CARE
MENTAL ILLNESS
ADA- Americans with Disabilities Act

Herman v. *County of York*, 482 F.Supp.2d 554 (M.D.Pa. 2007). The estate of a prisoner who had committed suicide in a county prison sued the county, a warden, the prison health service, and nurses, asserting Eighth Amendment claims under § 1983, claims under the Americans with Disabilities Act (ADA), and state medical malpractice claims. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court found that, notwithstanding a Pennsylvania statute stating that the safekeeping, discipline, and employment of prisoners was exclusively vested in a prison board, the county could be held liable to the prisoner under § 1983 for the actions of the warden if he was acting as an agent of the county. The court held that summary judgment was precluded by genuine issues of material fact as to whether the warden was acting as an agent for the county in allegedly failing to prevent the prisoner's suicide, and as to the warden's role in ratifying county prison policies. The court found that the county, warden, nurses, and prison health service were not deliberately indifferent to the medical needs of prisoner who committed suicide, where alleged failures to check on the prisoner in his cell was by officers other than the defendants, nurses could not have been deliberately indifferent if they were unqualified as the prisoner's estate said, and the nurses' failure to place the prisoner on a suicide watch did not fall outside their professional judgment, given the prisoner's denials of suicidal ideation and his family's testimony. The court found that the prisoner was not denied access to county prison's programs or services because of disability, and any failure by the county and warden to prevent his suicide thus was not discrimination in services, programs, or activities of a public entity in violation of ADA. The prisoner denied thoughts of suicide, he told a nurse that he did not wish to take anti-depressant medications which had been prescribed for him, and a nurse told him to return to mental health services if necessary. (York County Prison, Pennsylvania)

U.S. District Court
CRIPA- Civil Rights of Institutionalized Persons Act

Hopkins v. *Pusey,* 475 F.Supp.2d 479 (D.Del. 2007). An inmate brought a § 1983 action against prison officials, a state Attorney General, and civil liberties organization attorneys. The district court granted the defendants' motion to dismiss. The court held that prison officials and the Attorney General were not liable under the theory of respondeat superior. The court found that the attorneys for a civil liberties organization had no duty to prisoner to report alleged ongoing civil rights incidents to the United States Attorney under the Civil Rights of Institutionalized Persons Act (CRIPA). The court noted that the organization had not gratuitously agreed to report any alleged unconstitutional activities, and there was no attorney/client relationship between the organization and prisoner. The prisoner alleged that former and current American Civil Liberties Union ("ACLU") employees maintain a file containing allegations of a pattern of assault upon the prisoner and other inmates, but prevented and hindered the disclosure of the "on-going criminal conduct." (Delaware Correctional Center)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER
SEARCH
USE OF FORCE

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
FREE SPEECH AND ASSOCIATION
CORRESPONDENCE

Jordan v. *Pugh*, 504 F.Supp.2d 1109 (D.Colo. 2007). A federal inmate brought an action alleging that a prison regulation prohibiting inmates from acting as reporters or publishing under bylines violated the First Amendment. After a bench trial was held, the district court entered judgment for the inmate. The court found that the inmate had constitutional standing to raise the First Amendment challenge against the regulation, where the inmate had been punished twice for publishing under a byline. The court held that the federal Bureau of Prisons (BOP) regulation violated the First Amendment, despite the BOP's concerns of creating "big wheel" inmates who presented a security risk, a chilling effect on the performance or speech of prison staff, or permitting inmates to conduct business. The court noted that a myriad of similar publishing opportunities were available to inmates, there was no particular security risk associated with an inmate publishing under a byline in the news media that was not present with other inmate publications, the BOP had adequate authority to screen and exclude dangerous content coming into the prison, and there was no evidence linking inmates' outgoing news media correspondence to inmates conducting business. (Federal Bureau of Prisons, Administrative Maximum Unit ["ADX"], Florence, Colorado)

U.S. Appeals Court
WORK
RACIAL DISCRIMINATION

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. (Maximum Security Unit, Arkansas Department of Corrections)

U.S. Appeals Court
EQUAL PROTECTION
RELIGION

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
ADA- Americans with Disabilities Act
DISCRIMINATION

Safe Haven Sober Houses, LLC v. *City of Boston*, 517 F.Supp.2d 557 (D.Mass.2007). The operator of homes for recovering alcoholics and drug users, its executive director, and manager sued a city and its inspectional services department, alleging the department's regulatory and criminal enforcement actions against the operator and its officials violated nondiscrimination provisions of Massachusetts General Laws, the Fair Housing Act (FHA), the Americans With Disabilities Act (ADA), and the Rehabilitation Act. The plaintiffs filed a motion for a preliminary injunction to stay pending state court criminal proceedings. The district court denied the motion, noting that the plaintiffs failed to establish that other exceptional circumstances creating a threat of irreparable injury were both great and immediate, and that the Anti-Injunction Act (AIA) prevented the district court from enjoining pending criminal proceedings. (Massachusetts Housing Court Department, Boston Division and Safe Haven Sober Houses, LLC)

U.S. District Court
ADA- Americans with Disabilities Act
HANDICAP
RELIGION

Sanders v. *Ryan*, 484 F.Supp.2d 1028 (D.Ariz. 2007). A hearing-impaired inmate brought a civil rights action against a prison official and the State of Arizona, claiming his rights were violated under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment, Arizona civil rights laws, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a prison official's refusal to give the prisoner, who listened to audiotapes of Baptist church services as part of his faith, two new tapes unless he exchanged two tapes already in his possession to be destroyed, rather than stored, did not "substantially burden" the prisoner's exercise of his religion, as required to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The inmate had alleged that such conduct violated a state statute requiring the return of authorized inmate property to the inmate upon his release. The court noted that the new tapes were not authorized, as the prisoner already had the maximum number of tapes allowed, and the prisoner

failed to show that he was unable to practice his religion absent receipt of the new tapes. According to the court, the state department of corrections policy of limiting property an inmate could possess in his cell or in storage did not violate the rights of prisoners under the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the policy served the "compelling governmental interest" of enhancing the safety and security of prison facilities. The court found that the policy was the "least restrictive means" available to accommodate the government's compelling interests in safety and security. The court noted that the inmate was permitted to practice his religion by engaging in personal Bible study and prayer, receiving pastoral visits from an accredited minister, and listening to religious tapes. The inmate was able to mail excess religious tapes back to the church in exchange for new ones, and the inmate did not suggest an alternative that was less restrictive but which would accommodate the State's interests of safety and security. The court held that the state's failure to rebut the hearing-impaired inmate's evidence in opposition to a summary judgment motion that the prison denied him access to his bi-aural headphones, allowed the inference of discriminatory animus, as required to establish a claim under Title II of the Americans with Disabilities Act (ADA). The inmate had arranged to have four items, including the headphones, shipped to the prison before the effective date of the rule limiting prisoners' possessions, and the prison issued a television and a calculator but not headphones. The court held that the state's refusal to issue the hearing-impaired inmate bi-aural headphones so that he could watch television did not violate his First Amendment rights, where the inmate did not have a right to watch television, he was still able to receive information, ideas, and messages through books, magazines and newspapers, and the inmate acknowledged in his complaint that he was able to hear his television without his hearing aids. (Arizona Department of Corrections)

U.S. District Court
CIVIL COMMITMENT
SEX OFFENDER
DUE PROCESS
EQUAL PROTECTION

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
CIVIL COMMINTMENT
DUE PROCESS
SEX OFFENDER

U.S. v. *Shields*, 522 F.Supp.2d 317 (D.Mass.2007). Releases were stayed with regard to persons in the custody of the Bureau ofPrisons (BOP) who were certified as "sexually dangerous persons" under the Adam Walsh Act. The government requested hearings to determine whether each person was a "sexually dangerous person" subject to civil commitment to the custody of the Attorney General. The persons brought motions to dismiss. The district court denied the motions. The court held that: Congress had the authority to enact a statute governing civil commitment of sexually dangerous persons; the civil commitment had a rational relation to congressional authority; the persons did not have standing to assert an independent constitutional claim alleging that the Act violated the Tenth Amendment; the reasonable doubt standard applied to a backward-looking factual finding required for commitment; the clear and convincing standard for a forward-looking determination was sufficient to satisfy due process; the opportunity for a probable cause hearing before a neutral decision-maker had to be afforded within a reasonable period of time after any detention resulting from a stay; and the Act was a non-punitive civil measure not subject to criminal protections. (Adam Walsh Child Protection and Safety Act of 2006, Federal Bureau of Prisons)

U.S. District Court
CIVIL COMMITMENT
SEX OFFENDERS
RACIAL DISCRIMIN-
ATION

Webb v. *Budz*, 480 F.Supp.2d 1050 (N.D. Ill. 2007). African-American civil detainees in a state treatment and detention facility for sexually violent persons brought a § 1983 action against facility officials, alleging discrimination on the basis of race. The district court granted summary judgment in favor of the defendants. The court held that the African-American civil detainees who were placed on temporary special/secure management status (SMS) for committing acts of violence toward staff members were not similarly situated to five Caucasian detainees who were placed on SMS for committing acts of violence toward staff members, as required to establish a prima facie case of discriminatory effect in violation of equal protection. According to the court, after being placed on SMS, each of the Caucasian detainees progressed out of SMS as a result of good behavior and acceptance of responsibility, while the African-American detainees engaged in numerous acts of insubordination while on SMS, including threats on security staff, concealing weapons and contraband, and throwing urine at staff members. (Illinois Department of Human Services Treatment and Detention Facility for Sexually Violent Persons, Sheridan, Illinois)

U.S. District Court
CLASSIFICATION
DISCIPLINE
EQUAL PROTECTION
RACIAL DISCRIM-
INATION
WORK

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)

U.S. District Court
CIVIL COMMITMENT
DUE PROCESS
EQUAL PROTECTION

Alves v. *Murphy*, 530 F.Supp.2d 381 (D.Mass. 2008). A person who had been civilly committed as a sexually dangerous person (SDP) brought a civil rights action alleging that treatment center officials placed him at a risk of harm by not adhering to certain mandatory procedures prior to implementing a double-bunking policy. The plaintiff also alleged that the officials violated equal protection principles by granting privileges to certain residents at the center, but not to others. A magistrate judge dismissed the action. The judge held that failure of the state treatment center to follow its own procedures regarding double-bunking, standing alone, was not a sufficient basis for a § 1983 claim. The court noted that the First Circuit analyzes the constitutional claims of pretrial detainees, who, like civil committees, may not be punished, under the Due Process Clause of the Fourteenth Amendment. But, according to the court, the court draws on Eighth Amendment jurisprudence and applies the "deliberate indifference" standard when analyzing a pretrial detainee's failure-to-protect claims. (Massachusetts Treatment Center)

U.S. Appeals Court
MILITARY FACILITY
ALIENS

Belbacha v. *Bush*, 520 F.3d 452 (D.C. Cir. 2008). An alien, who was an Algerian national, petitioned for a writ of habeas corpus to challenge his detention at Guantánamo Bay, Cuba, and moved for interim relief barring his transfer to Algeria based on the likelihood of torture by the Algerian government and a terrorist organization. The district court denied the motion and the alien filed a notice of appeal and simultaneously requested bar of his transfer. A motions panel temporarily enjoined his transfer to preserve appellate jurisdiction. The appeals court remanded the case to decide whether a preliminary injunction was necessary and appropriate. The court also found that federal courts can preserve jurisdiction pending Supreme Court review of the same jurisdictional issue in a different case. According to the court, the Military Commissions Act (MCA) did not displace the federal courts' remedial powers. (Guantánamo Bay, Cuba)

U.S. District Court
PRIVACY
SELF-INCRIMINATION

Bellamy v. *Wells*, 548 F.Supp.2d 234 (W.D.Va. 2008). A pretrial detainee brought a § 1983 action against police officers and a chief of police for initiating and surreptitiously recording conversations with him while he was in custody on an indictment for rape. The district court entered judgment for the defendants in part. The court held that the detainee's allegations that police officers initiated and surreptitiously recorded conversations with him while he was in custody, and that incriminating statements he made during these conversations were subsequently used against him at trial, stated a cognizable claim under § 1983 for violation of his Fifth Amendment right against compelled self-incrimination. While in a hospital, the detainee spoke with an officer who was guarding him. When police learned of these conversations, they had the officer wear a recording device and they recorded subsequent conversations. The detainee was never given his Miranda warning during the course of these conversations. (City of Waynesboro, Virginia)

U.S. Appeals Court
RACIAL
DISCRIMINATION
CLASSIFICATION

Brand v. *Motley*, 526 F.3d 921 (6th Cir. 2008). A Black inmate, proceeding in forma pauperis, brought a § 1983 action after prison officials denied his request to share a cell with a white inmate in part because a "Black/White move is more difficult to do than a same race move." The district court dismissed the complaint as frivolous. The inmate appealed. The appeals court vacated and remanded. The court found that the prisoner's allegations--that he was discriminated against based on his race because his race figured into the denial of his request to move cells--was not frivolous, since prisoners were protected from racial discrimination under the Equal Protection Clause. (Eastern Kentucky Correctional Complex)

U.S. District Court
CIVIL COMMITMENT
CONDITIONS

Cerniglia v. *County of Sacramento*, 566 F.Supp.2d 1034 (E.D.Cal. 2008). A detainee who was involuntarily confined as a sexually violent predator (SVP) under California law brought a § 1983 action, alleging that his conditions of confinement in a total separation unit in a county jail violated his constitutional rights. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court reversed and remanded. On remand, the district court granted partial summary judgment in favor of the detainee on liability issues. The detainee moved to bar presentation of evidence to the jury of his status as an SVP. The district court granted the motion, finding that the detainee's SVP status was not relevant to the issue of whether his conditions of confinement were reasonably related to legitimate, non-punitive governmental interests, and that the probative value of the detainee's status as an SVP was outweighed by the danger of unfair prejudice. (Sacramento County Jail, California)

U.S. District Court
CIVIL COMMITMENT
CONDITIONS
SEARCHES
USE OF FORCE

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. 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
ADA-Americans with Disabilities Act
EQUAL PROTECTION
VERBAL HARASSMENT

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.

The court held that alleged verbal abuse from correctional officers when the deaf prisoner complained about the lack of a telephone typewriter (TTY) was too trivial to rise to the level of a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause. (Orleans Parish Prison, Louisiana)

U.S. District Court
FALSE ARREST
FALSE IMPRISONMENT

Farag v. *U.S.*, 587 F.Supp.2d 436 (E.D.N.Y. 2008). Airline passengers detained after a flight landed brought a Bivens action against Federal Bureau of Investigation (FBI) agents, a city police detective, and counterterrorism agents, alleging that their seizure, detention, and interrogation after the flight landed violated their Fourth Amendment rights, and false arrest and false imprisonment claims against United States under Federal Tort Claims Act (FTCA). The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the agents did not have probable cause to detain the airline passengers and that, as an issue of first impression, the agents could not rely on Arab ethnicity alone as probable cause to arrest airline passengers. The court held that the detention of the airline passengers at the terminal after their plane landed was a de facto arrest, rather than a Terry stop, for the purposes of the passengers' Fourth Amendment claims under the Federal Tort Claims Act (FTCA). The court noted that upon entering the terminal the passengers were met by police dogs and at least ten uniformed police officers in SWAT gear carrying shotguns. They were taken to separate locations about thirty-five to forty-feet apart, each accompanied by two police officers, ordered to raise their hands, and frisked. They were held in separate cells at a police station. The passengers were removed from the airline concourse and taken to a jail cell between five and fifteen minutes away by car. The court found that the four hour detention of passengers in a city jail was not a justified Terry stop for the purposes of the passengers' Fourth Amendment claims and common-law false imprisonment and false arrest claims. (Port Authority Police Station, Kennedy Airport, New York)

U.S. District Court
CIVIL COMMITMENT
CONDITIONS
MEDICAL CARE

Hubbs v. *County of San Bernardino, CA*, 538 F.Supp.2d 1254 (C.D.Cal. 2008). A civilly committed sexually violent predator (SVP) brought a civil rights action against a sheriff and county claiming numerous violations of his constitutional and statutory rights. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the SVP stated a civil rights due process claim against the county and a civil rights due process claim against the sheriff and county regarding conditions of his confinement at the jail. The SVP alleged that policies regarding conditions of confinement and denial of medical care injured him, and that the sheriff did not properly train his subordinate employees to prevent those injuries. The SVP alleged that the defendants did not provide prescribed medications and that a holding cell was cold and did not have a mattress, hygiene supplies, or bed roll. The court found that the SVP stated a Fourteenth Amendment due process claim against the sheriff and county, on allegations that, pursuant to the sheriff's policies, he was neither provided with prescribed medications in a manner directed by his treating physicians, nor allowed to have medications that were sent with him, and those deprivations caused him severe pain and suffering, made him sick and listless, and caused him to suffer from a migraine headache that lasted for four days. The SVP also alleged that he suffered from severe urinary problems, which included great difficulty in emptying his bladder, as a result of the deprivation. (West Valley Detention Center, San Bernardino County, California)

U.S. District Court
HARASSMENT
RACIAL DISCRIMINATION
USE OF 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. District Court
ALIEN
MEDICAL CARE
MILITARY FACILITY

Husayn v. *Gates*, 588 F.Supp.2d 7 (D.D.C. 2008). A detainee at the United States Naval Base in Guantanamo Bay, Cuba, filed a petition for a writ of habeas corpus challenging his detention as an enemy combatant. After denial of the detainee's motion for disclosure of his medical records, the detainee moved for reconsideration. The district court granted the motion in part and denied in part. The court held that counsel was entitled to review the detainee's medical records and staff records regarding his seizure-related episodes, despite the government's contention that the records were inherently related to detention, treatment, or conditions of confinement, and thus were exempted from judicial review. The court found that the records were necessary to permit counsel to assess whether and to what extent the detainee's medical condition affected his right to habeas relief, and to determine whether to challenge the legitimacy of his Combatant Status Review Tribunal (CSRT) hearing. The detainee alleged that he suffered over 120 seizures since he was first detained in 2006, and that they are currently frequent and severe. He alleged that they consist of excruciating pain in his head near the site of an old mortar injury that left him unable to think clearly or speak for an extended period. (United States Naval Base in Guantánamo Bay, Cuba)

U.S. District Court
ALIEN
CONDITIONS
HABEAS CORPUS

In re Guantanamo Bay Detainee Litigation, 577 F.Supp.2d 312 (D.D.C. 2008). In actions challenging the United States' detention of alleged enemy combatants at the Guantanamo Bay Naval Base, one detainee brought an emergency motion to compel access to his medical records and to order officials to provide him with a blanket and mattress in his cell. The district court denied the motion, finding that the court lacked jurisdiction to hear the claim. The court noted that no court, justice, or judge has jurisdiction to hear or consider an application for a writ of habeas corpus filed by, or on behalf of, an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination. The court also noted that no court, justice, or judge has jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such a determination. (United States Naval Base at Guantanamo Bay, Cuba)

U.S. District Court
ALIEN

Jama v. *Esmor Correctional Services Inc.*, 549 F.Supp.2d 602 (D.N.J. 2008). An alien brought an action alleging that a government contractor that detained her pending asylum proceedings violated the Religious Freedom Restoration Act (RFRA) and state law. After a jury verdict in the alien's favor, the alien moved for attorney fees and expenses. The district court granted the motion, finding that the alien was the “prevailing party, and that the alien's calculation of the percentage of attorney hours devoted to her RFRA claims was reasonable. The attorney fees and expenses approved by the court totaled $642,399. The decision was vacated and the case was remanded by an appeals court in 2009. The district court noted that “…the case arose out of the appalling conditions that prevailed at the detention center in Elizabeth, New Jersey”. The appeals court held that the district court could not attribute a portion of the alien’s state law tort award to her RFRA claim but that the court may consider the results on the tort claims. The appeals court affirmed the district court’s determination of market billing rates. (Esmor Correctional Services, Inc., Elizabeth, New Jersey)

U.S. District Court
VOTING

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. (Tennessee)

U.S. District Court
MEDICAL CARE

Jones v. *Westchester County Department of Corrections Medical Dept.*, 557 F.Supp.2d 408 (S.D.N.Y. 2008). A county prisoner brought pro se action against a county corrections department, warden, and administrative liaison, alleging deliberate indifference to his serious medical needs. The district court held that the prisoner's complaint, stating that he was scheduled for necessary surgery to alleviate chronic and extreme pain, and stating facts tending to show that prison officials denied him surgery in order to shift the cost to another agency, sufficiently alleged that he was denied adequate care, as required to state a claim for deliberate indifference to his serious medical needs. According to the court, the prisoner's complaint, stating that his hips caused him chronic and extreme pain, and that his pain would have been alleviated if he had been given hip replacement surgery, sufficiently alleged that his medical needs were serious, as required to state a deliberate indifference claim. The court found that the prisoner's complaint, stating that an administrative liaison made the final decision not to let him have hip replacement surgery, and that she personally, and with deliberate indifference to his suffering, put the county's financial concerns ahead of his medical needs, alleged with requisite specificity the personal involvement of the administrative liaison, as required to state a cause of action against her for deliberate

indifference to his serious medical needs in violation of the Eighth Amendment. (Westchester County Department of Corrections, New York)

U.S. Appeals Court
DUE PROCESS
EQUAL PROTECTION
EXHAUSTION

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. District Court
ALIENS
MILITARY FACILITY

Khadr v. *Bush*, 587 F.Supp.2d 225 (D.D.C. 2008). A detainee at the United States Naval Base in Guantánamo Bay, Cuba, filed a petition for a writ of habeas corpus. The detainee moved for judgment on the pleadings or, in the alternative, for summary judgment, and the government filed a cross-motion to dismiss or to hold the petition in abeyance pending completion of military commission proceedings. The district court granted the motions in part and denied in part. The court held that the Military Commissions Act (MCA) did not bar a challenge to detention based on the detainee's capture as a juvenile, but the detainee's challenge to detention based on his capture as a juvenile was barred by the habeas statute. The court found that a provision of the Military Commissions Act (MCA) barring courts from having jurisdiction over habeas petitions brought by or on behalf of an alien detained by the United States as an enemy combatant did not apply to the habeas claim brought by a detainee at the United States Naval Base in Guantánamo Bay, Cuba., where the detainee's claim was entirely independent from the prosecution, trial, or judgment of a military commission. But the court held that the detainee's petition challenged the conditions of his confinement, rather than the legality of his detention, and, thus, was barred by a provision of habeas statute barring the courts from having jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States as an enemy combatant. The court noted that the detainee's request for relief was not tantamount to a request for outright release and was more accurately characterized as a request seeking a different program or location or environment. (United States Naval Base in Guantánamo Bay, Cuba)

U.S. District Court
ADA-Americans with Disabilities Act
PROGRAMS

Kula v. *Malani*, 539 F.Supp.2d 1263 (D.Hawai'I 2008). A state prisoner brought a pro se civil rights complaint pursuant to § 1983 against a substance abuse counselor, social worker, and prison officer, seeking monetary damages and injunctive relief. The prisoner alleged that while incarcerated, the defendants violated his due process rights under the Americans with Disabilities Act (ADA). The district court held that the prisoner's termination from a prison drug rehabilitation program because he was found guilty of an administrative infraction, rather than by reason of his drug addiction itself, did not constitute discrimination under the Americans with Disabilities Act (ADA), notwithstanding the prisoner's contention that prison officials had fabricated misconduct charges against him. The court noted that the prisoner had no due process right to participate in a drug rehabilitation program under the Americans with Disabilities Act (ADA). (Saguaro Correctional Center, Arizona)

U.S. Appeals Court
BRUTALITY

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
ACCESS TO COURT

May v. *Rich*, 531 F.Supp.2d 998 (C.D.Ill. 2008). A state prisoner brought suit against a prison employee, alleging civil rights claims for denial of access to the courts and retaliation for filing grievances and litigation. Following a jury trial, the jury returned a general verdict in favor of the prisoner, awarding $2,388. The prison employee moved for judgment as matter of law or, in the alternative, for a new trial. The district court granted the motion, entering a judgment for the defendant as a matter of law. The court held that the prisoner did not suffer an actual injury, as required for a denial of access claim. The court found that the employee did not retaliate against the prisoner by filing a disciplinary report based on his possession of prison contraband. The court noted that the employee had an absolute duty to file a disciplinary report against the prisoner for possession of carbon paper, which was contraband in the prison system, such that reporting the prisoner could not be deemed retaliation for the prisoner's exercise of First Amendment rights in filing civil rights suits. (Pontiac Correctional Center, Illinois)

U.S. District Court
DISCRIMINATION
RACIAL DISCRIMINATION
SEX DISCRIMINATION

Moonblatt v. *District of Columbia*, 572 F.Supp.2d 15 (D.D.C. 2008). A former inmate filed a § 1983 action against the District of Columbia, alleging that correctional officers employed by a contractor hired to operate a detention center violated his civil rights on account of his race, religion, and sexual orientation. The district court denied summary judgment for the defendants. The court held that summary judgment was precluded by fact issues as to whether the District had constructive or actual notice of the inmate's mistreatment, and whether the contractor acted pursuant to a state custom or policy. The court found that an employee of a contractor hired by the District of Columbia to operate a detention center, sued in his official capacity, was subject to liability under § 1983 for alleged deprivations of the inmate's constitutional rights by correctional officers. (Correctional Treatment Facility, District of Columbia, operated by Corrections Corp. of America)

U.S. District Court
PROGRAMS
SELF-INCRIMINATION
SEX OFFENDER

Pentlarge v. *Murphy*, 541 F.Supp.2d, 421 (D.Mass. 2008). Detainees who had been civilly committed as sexually dangerous persons (SDPs) under Massachusetts law brought a civil rights suit against officials seeking damages and equitable relief against the enforcement of a policy requiring them to waive confidentiality as a condition to receiving sexual offender treatment. The district court granted the officials' motion to dismiss in part and denied in part. The court held that the detainees stated a claim for declaratory and injunctive relief against the policy that forced the detainees to choose between treatment and a waiver of the right against self-incrimination. The court found that the officials were entitled to qualified immunity from liability for damages as they were not on notice of the potential unconstitutionality of the waiver policy. (Nemansket Correctional Center, Massachusetts)

U.S. Appeals Court
ADA- Americans with Disabilities Act

Pierce v. County of Orange, 519 F.3d 985 (9th Cir. 2008). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims and the detainees appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the injunctive orders relating to the jail's reading materials, mattresses and beds, law books, population caps, sleep, blankets, dayroom access (not less than two hours each day), telephone access and communication with jailhouse lawyers were not necessary to correct current ongoing violations of the pretrial detainees' constitutional rights. Inmates had alleged that they were denied the opportunity for eight hours of uninterrupted sleep on the night before and the night after each court appearance. The court found that an injunction relating to restrictions of the detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. According to the court, providing pretrial detainees housed in administrative segregation only ninety minutes of exercise per week, less than thirteen minutes per day, constituted punishment in violation of due process standards. The court also found that the county failed to reasonably accommodate mobility-impaired and dexterity-impaired pretrial detainees in violation of the Americans with Disabilities Act (ADA). The court affirmed termination of 12 of the injunctive orders, but found that the district court erred in its finding that two orders were unnecessary. (Orange County, California)

U.S. Appeals Court
ALIENS
TORTURE

Rasul v. *Myers*, 512 F.3d 644 (D.C. Cir. 2008). Former detainees at a military facility in Guantanamo Bay, Cuba sued the Secretary of Defense and commanding officers alleging they were tortured. The detainees asserted claims under the Alien Torture Statute, under the Geneva Conventions, under the Religious Freedom Restoration Act (RFRA) and also asserted Fifth and Eighth Amendment claims on a *Bivens* cause of action. The defendants moved to dismiss and the district court granted the motion in part and denied the motion as to the RFRA claim. Both sides appealed. The district court affirmed in part and reversed as to the RFRA claim. The court held that the acts of torture allegedly committed against aliens detained at the military base in Cuba were "within the scope of employment" of military personnel who were allegedly committing such acts, for the purpose of deciding whether the United states should be substituted as defendant. The court found that the aliens were without property or presence in the United States and lacked any constitutional rights and could not assert a *Bivens* claim against military personnel for alleged due process violations and cruel and unusual punishment inflicted upon them. The court held that the term "persons" as used in the RFRA to generally prohibit the government from substantially burdening a "person's exercise of religion" did not extend to non-resident aliens. (United States Naval Base at Guantanamo Bay, Cuba)

U.S. District Court
LAW LIBRARY

Shell v. *Brun*, 585 F.Supp.2d 465 (W.D.N.Y. 2008). An inmate brought a § 1983 action against the employees of the New York State Department of Correctional Services (DOCS), alleging various constitutional violations. Following the dismissal of certain claims, the defendants moved for summary judgment on access to courts and failure-to-protect claims. The district court granted the motion. The court held that there was no evidence that a prison superintendent knew of the inmate's alleged problems with the law library that allegedly caused him difficulties in prosecuting a proceeding challenging a disciplinary report. According to the court, there was no evidence that any limitations on prison law library hours and book withdrawals were unreasonable, made it more difficult for the inmate to prosecute a state administrative proceeding challenging a misbehavior report, or that the outcome of the inmate's administrative proceeding would have been different but for those policies. The court noted that prison officials may place reasonable restrictions on inmates' use of facility law libraries, as long as those restrictions do not interfere with inmates' access to the courts. (Attica Corr'l Facility, New York)

U.S. Appeals Court
ADA-Americans With Disabilities Act

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. District Court
PAROLE
RACIAL DISCRIMINATION

Wilborn v. *Walsh*, 584 F.Supp.2d 384 (D.Mass. 2008). A state inmate filed a § 1983 action against state parole board members alleging that he was denied parole because of his sexual orientation. The members moved to dismiss. The district court granted the motion in part and denied in part. According to the court, the issue of whether the state parole board denied the homosexual prisoner parole because of his sexual orientation involved fact questions that could not be resolved on a motion to dismiss the prisoner's due process claims against parole board members. The court noted that even though a prisoner has no right to a valuable government benefit and even though the government may deny him benefit for any number of reasons, it may not deny the benefit to the prisoner on the basis that infringes his constitutionally protected interests. (Bay State Correctional Center, Massachusetts Parole Board)

U.S. District Court
ADA- Americans with Disabilities Act
HANDICAP PROGRAMS

Williams v. *Hayman*, 657 F.Supp.2d 488 (D.N.J. 2008). A state prisoner brought an action for violation of the Americans with Disabilities Act (ADA), alleging denial of various social and educational programs and services at a prison because he was deaf, and naming as a defendant the Commissioner of the New Jersey Department of Corrections (NJDOC), the Executive Director of the New Jersey Parole Board, the prison's chief administrator, the prison's assistant administrator, the prison's parole administrator, a corrections officer, two social workers at prison, and the prison's psychiatrist. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's deafness inhibited his capacity to express his grievances comprehensibly in writing in accordance with prison grievance program's requirements. The court also found a genuine issue of material fact as to the prison social worker's ability to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. (South Woods State Prison, New Jersey)

U.S. District Court
HYGIENE
RACIAL DISCRIMINATION
VERBAL HARASSMENT

Zavala v. *Barnik*, 545 F.Supp.2d 1051 (C.D.Cal. 2008). A state inmate filed a civil rights complaint in state court alleging that a prison official threw a roll of toilet paper at him, spit on him, and yelled profanities at him. After removal to federal court the official moved to dismiss. The district court dismissed the case. The court held that profanities allegedly directed by the prison official to the inmate did not evidence racial or discriminatory animus, where the official only referred to "you people." The court held that the inmate's alleged deprivation of toilet paper by the official did not rise to the level of an unquestioned and serious deprivation of a basic human need necessary to establish an Eighth Amendment violation, where the incident involved a de minimis, apparently brief, one-time deprivation. The court found that the official did not violate the inmate's Eighth Amendment rights by hitting the inmate on the leg with a toilet paper roll on one occasion, absent a showing of any physical injury. (Ironwood State Prison, California)

2009

U.S. District Court
VERBAL HARASSMENT

Abney v. *Jopp*, 655 F.Supp.2d 231 (W.D.N.Y. 2009). A federal prisoner brought a § 1983 action against three corrections officers, alleging a verbal confrontation with one officer and impeding the progress of an investigation into the incident by the other officers. The district court granted the defendants' motion for summary judgment. The court held that even if a correctional officer referred to the prisoner as a "snitch" in front of other inmates, the officer did not, absent some other action, violate the prisoner's Eighth Amendment rights, where the prisoner was never physically attacked, injured or threatened as a result of the officer's alleged actions. The court found that an alleged verbal altercation between the federal prisoner and one correctional officer, in which the officer called the prisoner a "pussy" and accused him of being afraid of "little women" did not give rise to an Eighth Amendment claim against the officer. The court noted that without more, allegations of verbal threats or abusive language were insufficient to form the basis of a § 1983 claim. (Batavia Federal Detention Facility, New York)

U.S. District Court
ALIENS
MILITARY FACILITY

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. District Court
MILITARY FACILITY

Al Ginco v. *Obama*, 626 F.Supp.2d 123 (D.D.C. 2009). A detainee being held at the United States Naval Base at Guantanamo Bay, Cuba, filed a petition for a writ of habeas corpus, alleging that he was being unlawfully detained by federal officials. The district court granted the petition, finding that the detainee was not lawfully detainable as an enemy combatant pursuant to the Authorization for Use of Military Force (AUMF) and was entitled to habeas corpus relief. The court held that the prior relationship between the detainee and al Qaeda or the Taliban can be sufficiently vitiated by the passage of time, intervening events, or both, such that the detainee can no longer be considered to have been "part of" either organization at the time he was taken into custody by United States forces when determining whether the detainee may be held as an enemy combatant. (United States Naval Base at Guantanamo Bay, Cuba)

U.S. Supreme Court
DISCRIMINATION
CONDITIONS

Ashcroft v. *Iqbal*, 129 S.Ct. (2009). A Muslim Pakistani pretrial detainee brought an action against current and former government officials, alleging that they took a series of unconstitutional actions against him in connection with his confinement under harsh conditions after separation from the general prison population. The detainee had been placed in a section of a federal detention facility known as the Administrative Maximum Special Housing Unit, where detainees were kept in lockdown 23 hours a day, spending the remaining hour outside their cells in handcuffs and leg irons accompanied by a four-officer escort. The district court denied in part the defendants' motions to dismiss on the grounds of qualified immunity and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The United States Supreme Court granted certiorari. The Supreme Court reversed and remanded. The court held that the appeals court had subject matter jurisdiction to affirm the district court's order denying the officials' motion to dismiss on the grounds of qualified immunity, and the detainee's complaint failed to plead sufficient facts to state a claim for purposeful and unlawful discrimination. The court noted that the detainee challenged neither the constitutionality of his arrest nor his initial detention, but rather the policy of holding post-September 11th detainees once they were categorized as of "high interest." (Fed. Bureau of Prisons, Metropolitan Detention Center, Brooklyn, New York)

U.S. District Court
ADA-Americans with Disabilities Act
HANDICAP
PRETRIAL DETAINEES
RA-Rehabilitation Act

Bahl v. *County of Ramsey*, 597 F.Supp.2d 981 (D.Minn. 2009). Two hearing-impaired arrestees, and their respective girlfriend and husband, brought an action against a county, sheriff's department, and city, alleging that they were arrested by city police officers without being provided an American Sign Language (ASL) interpreter and detained at an adult detention center (ADC) without access to an ASL interpreter or auxiliary aids that would have permitted them to communicate with others outside of the ADC. The plaintiffs asserted claims under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Minnesota Human Rights Act (MHRA), and for negligence. The district court dismissed the case in part. The court held that the girlfriend and husband had standing to sue the county, sheriff's department, and city under state and federal anti-discrimination laws, where they alleged that they experienced fear, anxiety, humiliation, and embarrassment because of the defendants' failure to permit the arrestees to contact them. The court found that the girlfriend and husband stated a claim for discrimination under the ADA by alleging that the arrestees requested auxiliary aids to communicate with people outside of the ADC, and that the county's failure to provide such aids precluded their communication with the arrestees. (Ramsey County Adult Detention Center, Minnesota)

U.S. District Court
INVOLUNTARY COMMITMENT
SEX OFFENDER

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
SEXUAL ASSAULT

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
ALIENS
INVOLUNTARY SERVITUDE
PRETRIAL DETAINEES
SEARCH

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. (N. Las Vegas Detention Center, Nevada)

U.S. District Court
PAROLE
DUE PROCESS

Cusamano v. *Alexander*, 691 F.Supp.2d 312 (N.D.N.Y. 2009). A parolee brought a civil rights action for alleged violations of his constitutional rights against, among others, the chairman of the New York State Parole Division, parole officers, the New York State Department of Correctional Services (DOCS), commissioner of DOCS, and the New York State Division of Parole (DOP). These defendants moved to dismiss for failure to state a claim, and the parolee cross-moved for summary judgment. The court held that the parolee does not have a due process-protected liberty interest in being free from special conditions of parole and the parolee failed to state claim for violation of his Fourth, Fifth Sixth and Eighth Amendment rights. The court held that the parolee adequately alleged the adverse action element of his First Amendment retaliation claim against the chairman of New York State Parole Division, which was based upon the chairman's purported conduct in requiring the parolee's enrollment in a drug treatment program in response to the parolee's speech, via letters, challenging his special conditions of confinement. The court also found that the parolee sufficiently alleged the personal involvement of the chairman where the parolee alleged that his parole officer identified the chairman as the individual responsible for ordering the parolee's enrollment in a drug treatment program. (New York State Division of Parole, Bare Hill Correctional Facility, New York)

U.S. District Court
ACCESS TO COURT
RACIAL DISCRIMINATION
SEX DISCRIMINATION

Delaney v. *District of Columbia*, 659 F.Supp.2d 185 (D.D.C. 2009). A former inmate and his wife brought a § 1983 action, on behalf of themselves and their child, against the District of Columbia and several D.C. officials and employees, alleging various constitutional violations related to the inmate's incarceration for criminal contempt due to his admitted failure to pay child support. They also alleged the wife encountered difficulties when she and her child attempted to visit the husband at the D.C. jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that District of Columbia judges and court clerks were entitled to quasi-judicial immunity against the § 1983 claims for monetary damages for alleged infringement of Fifth Amendment due process rights. According to the court, the defendants' acts of issuing court orders regarding the plaintiff's child support obligations, calculating the plaintiff's probation period, issuing hearing notices, filing court documents, and posting the plaintiff's child support payments, were performed pursuant to judicial functions. The court held that the inmate's wife did not allege that any District of Columbia custom or policy caused the alleged violation of her Fourth Amendment right against unreasonable seizure, precluding her § 1983 claim against a D.C. corrections official, even if the corrections officer's request that the inmate's wife wait to speak to a corrections official prior to exiting the visiting area constituted a seizure. The court held that an attorney, who was an African-American woman, stated a § 1983 claim against the District of Columbia and D.C. jail official for violations of her Fifth Amendment due process rights by alleging that an official refused to allow her to visit her clients at the jail based on her gender and race. (Lorton and Rivers Correctional Centers, District of Columbia Jail)

U.S. District Court
CORRESPONDENCE
DUE PROCESS
EQUAL PROTECTION

Doss v. *Gilkey*, 649 F.Supp.2d 905 (S.D.Ill. 2009). Federal prisoners brought an action against prison officials, alleging that the officials' failure to acknowledge the validity of their marriage and to grant them a spousal exemption to the rule that inmates could not correspond with each other violated their equal protection and due process rights. The officials moved for summary judgment. The district court granted the motion. According to the court, the prison officials' failure to acknowledge the validity of the marriage of two prisoners and to grant them a spousal exemption to the rule that inmates could not correspond with each other did not violate the prisoners' equal protection rights where there was no showing that officials singled out the prisoners based on their Islamic religion or any other improper consideration. The court found that the prison had a legitimate security interest in generally preventing unrelated prisoners from corresponding, the face of the prisoners' marriage certificate did not strictly comport with the statutory requirements, the marriage certificate was not registered, as required by state law, and there was some evidence that the marriage was not valid due to one prisoner's failure to terminate a prior marriage. (Federal Correctional Institution, Greenville, Illinois)

U.S. District Court
FHA-Fair Housing Act
SEX OFFENDERS

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. District Court
CLASSIFICATION
SEX OFFENDER

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. District Court
LOWER BUNK

Goodson v. *Willard Drug Treatment Campus*, 615 F.Supp.2d 100 (W.D.N.Y. 2009). A state prisoner filed a pro se § 1983 action against prison officials and a prison's drug treatment facility, claiming violation of his rights under the Eighth Amendment and the Equal Protection Clause. The district court granted summary judgment for the defendants. The court held that the prison's assignment of the prisoner to a top bunk from which he fell and was injured while confined in the prison's drug treatment facility, where he was sent for medical reasons relating to a herniated disc in his lower back, did not deprive the prisoner of his Eighth Amendment right to be free from cruel and unusual punishment. The court noted that the prisoner did not have a serious medical need for a lower bunk, and the prison did not make the top bunk assignment in deliberate indifference to the prisoner's medical needs. (Willard Drug Treatment Campus, New York State Department of Correctional Services)

U.S. Appeals Court
EQUAL PROTECTION
FREE SPEECH AND ASSOCIATION

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
EXECUTION

Harbison v. *Little*, 571 F.3d 531 (6th Cir. 2009). A state prison inmate under death sentence brought a § 1983 action challenging a state's lethal injection protocol. The district court granted judgment in favor of the inmate, holding that the protocol violated the Eighth Amendment, and the state appealed. The appeals court vacated and remanded. The appeals court held that: (1) lack of a physical inspection to determine unconsciousness after the administration of the first drug in the three-drug protocol did not create a substantial risk of severe pain; (2) procedures for selecting and training personnel involved in executions did not create a substantial risk of severe pain; (3) the procedure for visual monitoring of the administration of drugs used in the protocol did not create a

substantial risk of severe pain; and (4) the state's rejection of a one-drug lethal injection protocol did not create an objectively intolerable risk of serious harm. (Tennessee Department of Corrections)

U.S. Appeals Court
RACIAL DISCRIMINATION
USE OF 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
TELEPHONE COSTS

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
EQUAL PROTECTION
VISITS

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
CONDITIONS
MENTAL ILLNESS

Indiana Protection and Advocacy Services Com'n v. *Commissioner, Indiana Dept. of Correction*, 642 F.Supp.2d 872 (S.D.Ind. 2009). The Indiana Protection and Advocacy Services Commission (IPAS) brought an action against the Indiana Department of Correction, alleging violations of federal and state law in the conditions of custody of mentally ill prisoners. The Department moved to dismiss for lack of standing. The district court denied them motion. The court held that IPAS had an associational standing under the Protection and Advocacy of Mentally Ill Individuals Act (PAMII) to bring suit, and the action was not an intramural dispute between two state agencies that could be resolved by the governor. The court noted that mentally ill prisoners would have standing to sue on their own behalf for violations of federal and state law in the conditions of their custody, and the interests that IPAS sought to protect were not merely germane to the IPAS's purpose, they were its reason for existence. According to the court, IPAS was not a traditional state agency, was independent of the governor, was funded by the federal government under the Protection and Advocacy of Mentally Ill Individuals Act (PAMII), received no state funding and had authority independent of the state to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the state. (Indiana Department of Correction)

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

Merryfield v. *Jordan*, 584 F.3d 923 (10th Cir. 2009). A person who had been involuntarily committed to a state hospital brought an action against hospital officials, asserting a variety of claims relating to the conditions of his confinement and treatment, and seeking declaratory and injunctive relief. The district court dismissed the action and the committee appealed. He was granted permission to proceed in format pauperis (IFP) on appeal and ordered to make partial payments of the appellate filing fee through monthly payments from his institutional account. The appeals court held that, as a matter of first impression, the fee payment provisions of the Prison Litigation Reform Act (PLRA) applicable to prisoners did not apply to those who were civilly committed under the Kansas Sexually Violent Predator Act (KSVPA). (Sexual Predator Treatment Program, Larned State Hospital, Kansas)

U.S. Appeals Court
ACCESS TO COURT
PLRA- Prison Litigation Reform Act

Mitchell v. *Federal Bureau of Prisons*, 587 F.3d 415 (D.C. Cir. 2009). A prisoner brought an action against the Bureau of Prisons (BOP), alleging that he needed medical treatment for Hepatitis B and C and that an omitted notation regarding his need for protective custody resulted in his improper transfer to a high-security facility known for murders and assaults on anyone known as a snitch. The district court denied the prisoner's motion to proceed in forma pauperis (IFP). Prisoner moved to proceed IFP on appeal. The appeals court denied the motion. The court held that the Prison Litigation Reform Act (PLRA) did not bar the prisoner from proceeding IFP, but the prisoner qualified as an abusive filer under *Butler* v. *Department of Justice*, which held that a court could deny IFP status to a prisoner who, though not technically barred by the PLRA, had nonetheless abused the privilege. The court noted that the prisoner had 63 prior cases, only two of which were "strikes" under the PLRA. (USP Florence, Colorado, Federal Bureau of Prisons)

U.S. District Court
ALIENS
DISCRIMINATION
EQUAL PROTECTION
FALSE IMPRISONMENT

Ortega Melendres v. *Arpaio*, 598 F.Supp.2d 1025 (D.Ariz. 2009). Detainees of Hispanic descent brought an action against a county sheriff for declaratory and injunctive relief, alleging that deputies from the sheriff's office profiled, targeted, and ultimately stopped and detained persons based on their race in violation of the Fourth and Fourteenth Amendments. The district court ruled against the defendants' motion to dismiss. The court held that: (1) allegations were sufficient to state Fourth Amendment claims; (2) allegations were sufficient to state equal protection claims; (3) the county was subject to municipal liability; and (4) the court would not dismiss the county sheriff's office as a non-jural entity. The plaintiff was detained for four hours in a police holding cell without being apprised of any charges against him, and was then handed over to Immigration and Customs Enforcement officials. The court held that an allegation that deputies placed the Hispanic passenger of a speeding vehicle in full custodial arrest for violating United States immigration laws, even after the passenger provided them with sufficient immigration documents, including a United States Visa containing a fingerprint and picture, a Department of Homeland Security (DHS) permit, and a Mexican Federal Voter Registration Card with a picture and fingerprint, was sufficient to state a claim for a Fourth Amendment violation for being placed into full custodial arrest without probable cause. The court noted that an allegation that the deputies' request for an Hispanic driver's Social Security card was not "standard procedure" for all routine traffic stops conducted by the county. According to the court, allegations that the county sheriff made a public statement that physical appearance alone was sufficient to question an individual about their immigration status, that the county's crime suppression sweeps had been allegedly targeted at areas having a high concentration of Hispanics, and that the county had used volunteers with known animosity towards Hispanics and immigrants to assist in crime sweeps, were sufficient to allege a discriminatory purpose, as required to state a § 1983 equal protection claim. (Maricopa County Sheriff's Office, Cave Creek Holding Cell, Arizona)

U.S. District Court
ACCESS TO COURT
MILITARY FACILITY
TORTURE

Padilla v. *Yoo*, 633 F.Supp.2d 1005 (N.D.Cal.2009). A detainee, a United States citizen who was designated an "enemy combatant" and detained in a military brig in South Carolina, brought an action against a senior government official, alleging denial of access to counsel, denial of access to court, unconstitutional conditions of confinement, unconstitutional interrogations, denial of freedom of religion, denial of right of information, denial of right to association, unconstitutional military detention, denial of right to be free from unreasonable seizures, and denial of due process. The defendant moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, who was a United States citizen, had no other means of redress for alleged injuries he sustained as a result of his detention, as required for Bivens claim against the senior government official, alleging the official's actions violated constitutional rights. The court noted that the Military Commissions Act was only applicable to alien, or non-citizen, unlawful enemy combatants, and the Detainee Treatment Act did not "affect the rights under the United States Constitution of any person in the custody of the United States." The court found that national security was not a special factor counseling hesitation and precluding judicial review in the Bivens action brought by the detainee. Documents drafted by the official were public record, and litigation may be necessary to ensure compliance with the law. The court held that the detainee sufficiently alleged that the official's acts caused a constitutional deprivation, as required for the detainee's constitutional claims against the official. The detainee alleged that the senior government official intended or was deliberately indifferent to the fact that the detainee would be subjected to illegal policies that the official set in motion, and to a substantial risk that the detainee would suffer harm as a result, that the official personally recommended the detainee's unlawful military detention and then wrote opinions to justify the use of unlawful interrogation methods against persons suspected of being enemy combatants. According to the court, it was foreseeable that illegal interrogation policies would be applied to the detainee, who was under the effective control of a military authority and was one of only two suspected enemy combatants held in South Carolina.

The court found that the detainee's allegations that he was detained incommunicado for nearly two years with no access to counsel and thereafter with very restricted and closely-monitored access, and that he was hindered from bringing his claims as a result of the conditions of his detention, were sufficient to state a claim for violation of his right to access to courts against a senior government official. According to the court, the detainee's allegations that a senior government official bore responsibility for his conditions of confinement due to his drafting opinions that purported to create legal legitimacy for such treatment, were sufficient to state a claim under the Eighth Amendment, and thus stated a due process claim under the Fourteenth Amendment. The detainee alleged that while detained, he suffered prolonged shackling in painful positions and relentless periods of illumination and intentional interference with sleep by means of loud noises at all hours, that he was subjected to extreme psychological stress and impermissibly denied medical care, that these restrictions and conditions were not justified by a legitimate penological interest, but rather were intended to intensify the coerciveness of interrogations. The court held that federal officials were cognizant of basic fundamental civil rights afforded to detainees under the United States Constitution, and thus a senior government official was not entitled to qualified immunity from claims brought by the detainee. The court also held that the official was not qualifiedly immune from claims brought by the detainee under the Religious Freedom Restoration Act (RFRA). (Military Brig, South Carolina)

U.S. Appeals Court
CIVIL COMMITMENT
SEARCHES
SEX OFFENDERS

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
ADA- Americans with Disabilities Act
CONDITIONS
HANDICAP

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 a state prisoner who depended on a wheelchair for mobility was not required by the administrative remedy exhaustion requirement under the Prison Litigation Reform Act (PLRA) to appeal a grievance regarding the height of a food service counter before bringing suit, where the grievance that he filed conceivably was resolved in his favor. The court noted that although the height of a counter was not lowered in response to the grievance, the prison had attempted to remedy the situation by changing the way in which hot food was served from the counter. According to the court, the inability of disabled prisoners who depended on wheelchairs for mobility to access restrooms throughout a state prison rose to the level of an objective violation of the Eighth Amendment, where the prisoners soiled themselves up to several times per week. The court noted that the sheer frequency with which those incidents occurred, not to mention the physical injuries that at least some prisoners had suffered in attempting to use an inaccessible restroom, indicated that the prisoners had been denied a minimal civilized measure of life's necessities or there was an unreasonable risk of serious damage to their future health. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison and its employees were deliberately indifferent to the prisoners' restroom needs. The court found that the height of a food service counter and the absence of accessible water fountains throughout the state prison were not conditions that deprived disabled prisoners, who depended on wheelchairs for mobility, of minimal civilized measure of life's necessities and they did not pose an unreasonable risk of serious damage to their future health, as required for a violation of the Eighth Amendment's prohibition on cruel and unusual punishment. The court noted that although one prisoner suffered a burn on his hand caused by hot food or liquid falling from a food service counter, falling or spilled food did not create an unreasonable risk of serious damage to the prisoner's health. 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. Appeals Court
VOTING

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. District Court
CIVIL COMMITMENT
PRIVACY
VISITS

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)

U.S. District Court
DISCIPLINE
HARASSMENT

Willey v. *Kirkpatrick*, 664 F.Supp.2d 218 (W.D.N.Y. 2009). A state prisoner brought an action under § 1983 against a prison superintendent, corrections sergeant, corrections officers, and others. The defendants filed a motion to dismiss for failure to state a claim on which relief could be granted. The district court denied the motion, finding that the prisoner's allegations were sufficient to allege a corrections sergeant's personal involvement in a civil rights violation, as well as the superintendent's and corrections officers. The court found that the prisoner's allegations that a prison corrections sergeant supervised corrections officers, that the sergeant "allowed" officers to harass the prisoner by filing multiple false misbehavior reports, that the sergeant "abdicated his duty" to prevent such harassment, and that the sergeant "participated in" the harassment, were sufficient to allege the sergeant's personal involvement in a civil rights violation. According to the court, the prisoner's allegations that he wrote to the prison superintendent challenging his false imprisonment in a special housing unit (SHU) because he had done nothing wrong, and that the superintendent responded but did not remedy the situation, were sufficient to allege the superintendent's personal involvement in constitutional violations, as required to state a claim against the superintendent under § 1983. The court also found that allegations that prison corrections officers issued false misbehavior reports against the prisoner, and that he was not allowed to question witnesses at a hearing and was ejected from the hearing, were sufficient to state claims under § 1983 against the officers for filing false misbehavior reports and violations of due process. (Wende Correctional Facility, New York)

2010

U.S. Appeals Court
GRIEVANCE
ADA-Americans with Disabilities Act
RA- Rehabilitation Act

Armstrong v. *Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010). A class of disabled state prison inmates and parolees moved for an order requiring state prison officials to track and accommodate the needs of disabled parolees housed in county jails, and to provide access to a workable grievance procedure pursuant to the officials' obligations under the Americans with Disabilities Act (ADA), Rehabilitation Act, and prior court orders. The district court granted the motion and the state appealed. The appeals court affirmed in part and vacated in part. The appeals court held that: (1) contractual arrangements between the state and a county for incarceration of state prison inmates and parolees in county jails were subject to ADA; (2) the district court's order was not invalid for violating federalism principles; (3) the state failed to show that the order was not the narrowest, least intrusive relief possible, as required by the Prison Litigation Reform Act (PLRA); but (4) there was insufficient evidence to justify the system-wide injunctive relief in the district court's order. The court noted the state's recent proposal to alter its sentencing practices to place in county jails approximately 14,000 persons who would otherwise be incarcerated in state prisons. The court also noted that the state's contracts with counties were not simply for incarceration, but to provide inmates and parolees in county jails with various positive opportunities, from educational and treatment programs, to opportunities to contest their incarceration, to the fundamentals of life, such as sustenance, and elementary mobility and communication, and the restrictions imposed by incarceration meant that the state was required to provide these opportunities to individuals incarcerated in county jails pursuant to state contracts to the same extent that they were provided to all state inmates. The district court's order did not require the state to shift parolees to state facilities if county jails exhibited patterns of ADA non-compliance; rather, the order required that, if the state became aware of a class member housed in a county jail who was not being accommodated, the state either ensure that the jail accommodated the class member, or move the class member to a state or county facility which could accommodate his needs. In finding that statewide injunctive relief was not needed, the court held that evidence of ADA violations was composed largely of single incidents that could be isolated, and the district court's order identified no past determinations that showed class members in county jails were not being accommodated. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
WAIVER OF RIGHTS

Avalos v. *Baca*, 596 F.3d 583 (9th Cir. 2010). A detainee brought an action against officers of a county sheriff's department in their official and individual capacities for alleged violations of his Fourth and Fourteenth Amendment rights based on his over-detention and the officers' alleged efforts to procure an involuntary waiver of his civil rights claim. The district court granted summary judgment in favor of the officers. The detainee appealed. The appeals court affirmed. The court held that the officers were not liable under § 1983 in their official capacities on the over-detention claim, absent evidence that they had a policy, practice, or custom of over-detaining inmates. According to the court, the detainee had no freestanding constitutional right to be free of a coercive waiver, and even if the detainee had a right to be free from a coercive waiver, the officers were entitled to qualified immunity on the involuntary waiver claim. The detainee had been arrested on a warrant from another county for domestic abuse and was transported to the arresting county jail. The arresting county had the responsibility to notify the other county, under state law, but failed to do so. Over two months later the arresting county realized that the detainee had been over-detained and released him. On the day of his release, a deputy in street clothing asked the detainee, who did not speak English, to sign papers that were an offer to settle his claim for over-detention for $500. The detainee asserted that he did not know what was in the papers. (Los Angeles Sheriff's Department, California)

U.S. District Court
CIVIL COMMITMENT
DUE PROCESS

Bailey v. *Pataki*, 722 F.Supp.2d 443 (S.D.N.Y. 2010). State prisoners brought a § 1983 action against the former governor and governor's staff, alleging violations of the Fourth and Fourteenth Amendments. 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 civil confinements of prison inmates comported with Fourteenth Amendment procedural due process. The court also found a genuine issue of material fact as to whether state inmates' right to a pre-deprivation hearing prior to a civil commitment at the end of their prison sentences was clearly established. (New York Department of Correctional Services)

U.S. District Court
ADA-Americans with Disabilities Act
PLRA- Prison Litigation Reform Act
RA- Rehabilitation Act

Clark v. *California*, 739 F.Supp.2d 1168 (N.D.Cal. 2010). The state of California, Governor and various state prison officials filed a motion pursuant to the Prison Litigation Reform Act (PLRA) to terminate the prospective relief in a 2001 settlement agreement and an order that required them to comply with a remedial plan designed to ensure that California prisoners with developmental disabilities were protected from serious injury and discrimination on the basis of their disability. Developmentally disabled prisoners moved for enforcement of, and further relief under, the settlement agreement and order. The court held that for the purposes of a motion pursuant to the Prison Litigation Reform Act (PLRA), testimony from a few prison staff members at individual prisons did not prove systemic compliance with the remedial plan. The court held that termination of the settlement agreement and order entered pursuant to Prison Litigation Reform Act (PLRA) was unwarranted since the state defendants failed to carry their burden to show the absence of current and ongoing rights violations under ADA and Rehabilitation Act, and the prospective relief contained in the settlement agreement and order remained necessary, was sufficiently narrow, and was minimally intrusive. According to the court, the defendants failed to fulfill their obligation to provide developmentally disabled California prisoners with the accommodations and program modifications that would enable them to gain access to prison programs, services, and activities afforded non-disabled prisoners. The court found that the state defendants were not deliberately indifferent, so as to violate the Eighth Amendment, even though the state defendants had not adequately implemented the remedial plan, where the correction department's policies provided for constitutionally acceptable treatment. The court ruled that further relief was necessary under the Prison Litigation Reform Act (PLRA) to secure the rights of class of developmentally disabled prisoners, where the defendants demonstrated an ignorance of conditions for developmentally disabled prisoners and an inability to recognize the gravity of and to remedy the problems that had been identified by the court expert and others. According to the court, the defendants demonstrated an inability to take remedial steps absent court intervention, evidence reflected that the defendants had failed to comply with the remedial plan even nine years later, and the remedial plan in its current form did not go far enough to ensure compliance with the Americans with Disabilities Act (ADA) and Rehabilitation Act. (California Department of Corrections and Rehabilitation)

U.S. District Court
SAFETY
SECURITY
LIABILITY

Dean v. *Walker*, 743 F.Supp.2d 605 (S.D.Miss. 2010). Motorists injured when a squad car commandeered by an escapee collided with their vehicle brought a § 1983 action in state court against a county sheriff and deputy sheriffs, in their individual and official capacities, the county, and others, asserting various claims under federal and state law. The case was removed to federal court where the court granted in part and denied in part the defendants' motion for summary judgment. The defendants moved to alter or amend. The court denied the motion. The court held that the "public duty" doctrine did not relieve the county of tort liability to the motorists under the Mississippi Tort Claims Act (MTCA). The court found that the county sheriff and deputy sheriffs who were in vehicular pursuit of the escaped jail inmate when the escapee's vehicle crashed into the motorists' vehicle owed a duty to the motorists as fellow drivers, separate and apart from their general duties to the public as police officers, and thus the "public duty" doctrine did not relieve the county of tort liability in the motorists' claims under the Mississippi Tort Claims Act (MTCA). (Jefferson–Franklin Correctional Facility, Mississippi)

U.S. District Court
ADA-Americans with Disabilities Act
RA- Rehabilitation Act
TELEPHONE COSTS
VISITS

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. Appeals Court
VOTING

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
ALIENS
PLRA- Prison Litigation Reform Act

Franco-Gonzales v. *Holder*, 767 F.Supp.2d 1034 (C.D.Cal. 2010). Aliens, who were diagnosed with severe mental illnesses, filed a class action, alleging that their continued detention without counsel during pending removal proceedings violated the Immigration and Nationality Act (INA), the Rehabilitation Act, and the Due Process Clause. The aliens moved for a preliminary injunction. The district court granted the motion in part. The court held that the aliens were not required to exhaust administrative remedies, since the very core of the aliens' claim was that without the appointment of counsel, they would be unable to meaningfully participate in the administrative process before the BIA, and the BIA did not recognize a right to appointed counsel in removal proceedings under any circumstances; therefore, resort to the BIA would be futile. The court held that the mentally ill aliens who were detained pending removal proceedings, without counsel and for prolonged periods without custody hearings, were entitled to a mandatory preliminary injunction requiring the immediate appointment of qualified counsel to represent them during their immigration proceedings and custody hearings. (Department of Homeland Security, Immigration and Customs Enforcement, Northwest Detention Center, Tacoma, Washington)

U.S. Appeals Court
CONDITIONS
MEDICAL CARE
MENTAL ILLNESS

Graves v. *Arpaio*, 623 F.3d 1043 (9th Cir, 2010). Pretrial detainees in a county jail system brought a class action against a county sheriff and the county supervisors board, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The district court awarded attorney fees to the detainees. The sheriff appealed the second amended judgment. The appeals court affirmed. The court held that the district court did not abuse its discretion by ordering prospective relief requiring the sheriff to house all detainees taking psychotropic medications in temperatures not exceeding 85 degrees and requiring the sheriff to provide food to pretrial detainees that met or exceeded the United States Department of Agriculture's Dietary Guidelines for Americans. The district court had held that air temperatures above 85 degrees greatly increased the risk of heat-related illnesses for individuals taking psychotropic medications, and thus that the Eighth Amendment prohibited housing such detainees in areas where the temperature exceeded 85 degrees. (Maricopa County Sheriff, Jail, Maricopa County Supervisors, Arizona)

U.S. District Court
TELEPHONE COSTS

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. (Federal Bureau of Prisons, Washington, D.C.)

U.S. Appeals Court
VOTING

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
DEATH
FAILURE TO PROTECT
MEDICAL CARE

Jones v. *Muskegon County*, 625 F.3d 935 (6th Cir. 2010). A father, as the personal representative of the estate of a deceased pretrial detainee, brought an action against a county and various corrections officers and medical staff, alleging constitutional claims pursuant to § 1983, gross negligence and intentional infliction of emotional distress. The district court granted the defendants' motions for summary judgment. The father appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that assignment charts listing corrections officers assigned to the pretrial detainee's area during the period in which his health deteriorated, and affidavits from other detainees who witnessed his deterioration and the officers' alleged failure to assist the detainee, were insufficient to create a fact issue as to whether the officers were deliberately indifferent towards the detainee's serious medical needs in violation of the Fourteenth Amendment. The court noted that the affidavits referred to "guards" in a general sense without specifying wrongdoing attributable to any particular officer, and did not specify which officers observed the detainee's deterioration or ignored his requests for medical care. The court found that a correctional officer's failure to immediately call an ambulance upon observing the pretrial detainee's deteriorating health condition was not deliberate indifference towards his serious medical needs as would violate the Fourteenth Amendment, where the officer believed the decision to call an ambulance was not hers to make but was command's, and the officer attended to the detainee's medical needs and made efforts to make him more comfortable. But the court found that summary judgment was precluded by a genuine issue of material fact as to whether prison nurses were aware of the risk to the pretrial detainee's health and chose to disregard the risk, and whether the prison nurses were grossly negligent under Michigan law as to the pretrial detainee's medical care. (Muskegon County Jail, Michigan)

U.S. District Court
FAILURE TO PROTECT
DEATH
MEDICAL CARE

Lum v. *County of San Joaquin*, 756 F.Supp.2d 1243 (E.D.Cal. 2010). An arrestee's survivors brought an action against a county, city, and several city and county employees, alleging § 1983 claims for various civil rights violations and a state law claim for wrongful death arising from the arrestee's accidental drowning after his release from the county jail. The defendants moved to dismiss portions of the complaint and the survivors moved for leave to amend. The district court granted the defendants' motion in part and denied in part, and granted the plaintiffs' motion. The survivors alleged that the city's police sergeants made a decision to arrest the individual for being under the influence in public, despite lack of evidence of alcohol use and knowledge that the individual was being medicated for bipolar disorder, and to book him on a "kickout" charge so that he would be released from jail six hours later. The court found that the arresting officers, by taking the arrestee into custody, created a special relationship with the arrestee, similar to the special relationship between a jailer and a prisoner, so as to create a duty of care for the purposes of wrongful death claim under California law, arising from the arrestee's accidental drowning following his release from the county jail. The court noted that it was foreseeable that the arrestee needed medical attention and that there was a risk posed by releasing him without providing such attention. The court held that the county, city, and arresting officers were entitled to immunity, under a California Tort Claims Act section related to liability of public entities and employees for the release of prisoners, for the wrongful death of the arrestee, only as to the basic decision to release the arrestee from the county jail, but not as to the defendants' ministerial acts after the initial decision to release the arrestee. The court noted that the arrestee had a lacerated foot, was covered with vomit and had trouble walking, and had a seizure while he was in a holding cell. The arrestee's body was found floating in the San Joaquin River, approximately two miles west of the county jail, shortly after he was released. (San Joaquin County Jail, California)

U.S. District Court
ADA-Americans with Disabilities Act
HANDICAP

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)

U.S. Appeals Court
ALIENS
USE OF FORCE

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. District Court
RACIAL DISCRIM-INATION
WORK

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
RACIAL DISCRIMINATION

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. District Court
RACIAL DISCRIMINATION
HARASSMENT

Shariff v. *Poole*, 689 F.Supp.2d 470 (W.D.N.Y. 2010). A state prisoner who was a paraplegic brought a § 1983 action against current and former New York State Department of Correctional Services (DOCS) employees, alleging that the employees conspired and retaliated against him. The employees moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the prisoner failed to show that the employees acted with racial or related class-based discriminatory animus, as would support his claim that the employees conspired to interfere with his civil rights by denying him rights and privileges. The court held that the alleged actions of the employees, including subjecting the prisoner who was paraplegic and who, as vice-chairman of the prisoners' liaison committee, had filed grievances against employees, to an excessive number of cell searches, filing false misbehavior reports, confiscating legal documents, verbally threatening the prisoner, and excessively pat frisking and searching the prisoner, amounted to adverse actions for the purposes of the prisoner's § 1983 First Amendment retaliation claim against the employees, although such actions did not necessarily amount to violations of the prisoner's constitutionally protected rights. The court held that summary judgment was precluded by a genuine issue of material fact existed as to whether a state correctional officer acted with retaliatory motive in confiscating an unfinished grievance of the prisoner who was vice-chairman of prisoners' liaison committee. (Five Points Correctional Facility, New York)

U.S. District Court
RACIAL DISCRIMINATION
SEX DISCRIMINATION
VISITS

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)

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

Taylor v. *Watkins*, 623 F.3d 483 (7th Cir. 2010). A state prisoner filed a § 1983 action against officers and employees of the Illinois Department of Corrections, claiming violation of his civil rights by allegedly contaminating his food, tampering with his mail, depriving him of sleep, and assaulting him. Following an evidentiary hearing, the district court denied the prisoner's request to proceed in forma pauperis (IFP), upon concluding that he was not in imminent danger as required for the three-strikes provision of the Prison Litigation Reform Act (PLRA), and subsequently dismissed action after the prisoner failed to pay the filing fee. The prisoner appealed and requested leave to proceed IFP. The appeals court denied the request. The court held that a prior evidentiary hearing was required to consider contested imminent danger allegations, ordering the prisoner to pay the filing fee if he wanted the case to go forward. (Illinois Department of Corrections)

U.S. District Court
CIVIL COMMITMENT
SEX OFFENDER

U.S. v. *Graham*, 683 F.Supp.2d 129 (D.Mass. 2010). The federal government brought a civil action seeking to commit a federal prison inmate as a sexually dangerous person pursuant to the Adam Walsh Child Protection and Safety Act. At the conclusion of a bench trial, the parties proposed findings of fact and conclusions of law. The court held that the government failed to establish by clear and convincing evidence that the inmate suffered from nonconsensual sex paraphilia as would make him sexually dangerous to others. According the court, despite a criminal history involving three sex offenses, there was no evidence that the inmate was aroused by, fantasized about, or fixated on non-consenting partners. The court noted that the inmate's criminal history included a number of non-sexual offenses, including assault, battery, and petit larceny, which further indicated

the paraphilia diagnosis was inappropriate, and the testimony and report of the government's licensed psychologist supporting a paraphilia diagnosis not only conflicted with conclusions of the court-appointed psychiatrist and psychologist, but contained a number of factual inconsistencies and evinced a reluctance to credit contradictory evidence, which pointed to a bias in finding that inmate suffered from paraphilia that detracted from a government psychologist's credibility. (Adam Walsh Child Protection and Safety Act of 2006, Federal Bureau of Prisons)

U.S. District Court
MIRANDA WARNING

U.S. v. *Marion*, 708 F.Supp.2d 1131 (D.Or. 2010). An inmate who was charged with assaulting a fellow inmate moved to suppress evidence for lack of a Miranda warning during administrative interviews and disciplinary proceedings at the prison. The district court held that the inmate, who was housed in a segregated housing unit (SHU), was "in custody" for the purposes of Miranda, granting the inmate's motion. The court noted that SHU confinement imposed severe restrictions on the inmate's movements within the prison and the inmate's transfer to SHU limited the freedom of movement he enjoyed when housed with the general prison population. The court noted that in SHU, the inmate was in his cell 23 hours a day, could not eat with other prisoners, could not access the same type of recreation or converse with other prisoners, and could not move freely to the various destinations in the prison. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
SEX OFFENDERS

U.S. v. *Sanders*, 622 F.3d 779 (7th Cir. 2010). A defendant charged with violating the Sex Offender Registration and Notification Act (SORNA) by traveling in interstate commerce without updating his sex offender registration, moved to dismiss the indictment on the grounds that SORNA's registration requirement exceeded Congressional authority under the Commerce Clause. The district court denied the motion. The appeals court affirmed, finding that SORNA did not exceed Congress' authority under the Commerce Clause. (Mississippi and Wisconsin)

2011

U.S. Appeals Court
SEXUAL ABUSE
SEXUAL HARASSMENT

Amador v. *Andrews*, 655 F.3d 89 (2nd Cir. 2011). Current and former female inmates filed a class action § 1983 suit against several line officers employed at seven state prisons and various supervisors and other corrections officials, claiming that they were sexually abused and harassed by the line officers and that the supervisory defendants contributed to this abuse and harassment through the maintenance of inadequate policies and practices. The district court dismissed, and the inmates appealed. The appeals court dismissed in part, and vacated and remanded in part. The court held that the female inmates who made internal complaints, investigated by an Inspector General (IG), that sought redress only for the alleged actions of a particular corrections officer and did not seek a change in policies or procedures, failed to exhaust their internal remedies, as required by the Prison Litigation Reform Act (PLRA) to proceed in federal court on § 1983 claims of sexual abuse and harassment. But the court found that the female inmates' claim of a failure to protect was sufficient exhaustion with regard to a § 1983 class action litigation seeking systemic relief from alleged sexual abuse and harassment. (New York Department of Correctional Services)

U.S. District Court
CONDITIONS
VISITS

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. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER
MEDICAL CARE

Battista v. *Clarke*, 645 F.3d 449 (1st Cir. 2011). A Massachusetts civil detainee, who was anatomically male but suffered from gender identity disorder (GID), brought an action against Massachusetts officials alleging "deliberate indifference" to her medical needs, and seeking an injunction requiring that hormone therapy and female garb and accessories be provided to her. The district court granted preliminary injunctive relief, and the state officials appealed. The appeals court affirmed. The appeals court held that the record supported the district court's conclusion that Massachusetts officials were deliberately indifferent to the medical needs of the civil detainee or exercised an unreasonable professional judgment by denying her female hormone therapy. The court noted that it had been fifteen years since the detainee first asked for treatment, and for ten years, health professionals had been recommending hormone therapy as a necessary part of the treatment. According to the court, when, during the delay, the detainee sought to castrate herself with a razor blade, state officials could be said to have known that the detainee was at a "substantial risk of serious harm." (Massachusetts Treatment Center for Sexually Dangerous Persons)

U.S. Appeals Court
SEX OFFENDER

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
SEXUAL ABUSE

Chao v. *Ballista*, 806 F.Supp.2d 358 (D.Mass. 2011). A female former inmate brought an action under § 1983 and the Massachusetts Civil Rights Act (MCRA) against a prison guard and superintendent, alleging that the guard violated her constitutional rights by sexually exploiting her while she was incarcerated, and that the superintendent failed to protect her from the guard's repeated sexual battery. Following a jury trial, the district court entered judgment in the inmate's favor. The defendants subsequently moved for judgment as matter of law or for a new trial. The district court denied the motions. The court held that the question of whether the prison guard's misconduct in sexually exploiting the inmate while she was incarcerated rose to the level of "sufficiently serious harm" necessary to establish an Eighth Amendment violation, was for the jury. The court also found that the issue of whether the prison guard and superintendent were deliberately indifferent to the rights, health, or safety of the inmate was for the jury. The court found that the jury verdict finding that the prison superintendent was not liable for punitive damages because the superintendent's conduct was not "willful, wonton, or malicious," was not inconsistent with the verdict finding that the superintendent was "sufficiently culpable" as to have been deliberately indifferent to the inmate's needs, in violation of the Eighth Amendment. The court noted that malicious conduct is not required to sustain an Eighth Amendment claim for supervisory liability for deliberate indifference. According to the court, issues of whether the prison guard knew, or should have known, that emotional distress would result from his sexually exploiting the inmate while she was incarcerated, and as to whether the guard's conduct, including demanding fellatio in 23 separate places with the inmate, was extreme and outrageous, were for the jury. The court found that the superintendent was not entitled to qualified immunity from the former inmate's § 1983 claim alleging that the superintendent failed to protect her from the prison guard's repeated sexual exploitation, in violation of the Eighth Amendment, where the law was clearly established that prison officials had a duty to protect their inmates by training and supervising guards, creating and sustaining a safe prison environment, and investigating allegations of sexual misconduct or abuse when they arose. (South Middlesex Correctional Center, Massachusetts)

U.S. District Court
SAFETY
SECURITY
LIABILITY

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
ALIENS

Diouf v. *Napolitano*, 634 F.3d 1081 (9th Cir. 2011). A Senegalese detainee, who was subject to a voluntary departure order or an alternate removal order, filed a petition for a writ of habeas corpus requesting a preliminary injunction for immediate release from prolonged immigration detention. The district court denied the petitioner's motion, and the petitioner appealed. The appeals court reversed and remanded. The court held that an alien subject facing prolonged detention is entitled to a bond hearing before an immigration judge and is entitled to be released from detention unless the government establishes that the alien poses a risk of flight or a danger to the community. (U.S. Immigration and Customs Enforcement, San Pedro Detention Facility, California)

U.S. District Court
SELF INCRIMINATION
SEX OFFENDER

Doe v. *Heil*, 781 F.Supp.2d 1134 (D.Colo. 2011). A state prisoner convicted of a sex offense filed a § 1983 action, alleging that Department of Corrections (DOC) regulations requiring him to provide a full sexual history and to pass a polygraph examination in order to participate in a sex offender treatment program violated his constitutional rights. The defendants moved to dismiss. The district court granted the motion. The court held that the regulations did not violate the prisoner's Fifth Amendment privilege against self-incrimination. According to the court, the DOC had a legitimate penological interest in having convicted sex offenders complete a treatment program before being released on parole. The court found that the prisoner lacked a due process liberty interest in participating in a sex offender treatment program. (Colorado Department of Corrections Sex Offender Treatment and Monitoring Program)

U.S. District Court
ALIENS
MENTAL ILLNESS
ACCESS TO COURT

Franco-Gonzales v. *Holder*, 828 F.Supp.2d 1133 (C.D.Cal. 2011). Immigrant detainees brought a putative class action on behalf of mentally disabled detainees being held in custody without counsel during removal proceedings, asserting claims under the Immigration and Nationality Act (INA), Rehabilitation Act, and Due Process Clause. A detainee who was a native and citizen of Belarus, and who had been deemed mentally incompetent to represent himself in removal proceedings, moved for a preliminary injunction. The district court granted the motion in part. The court held that: (1) the detainee was entitled to a custody hearing at which the government had to justify his continued detention on the basis that he was a flight risk or would be a danger to the community; (2) a qualified representative for a mentally incompetent immigrant detainee may be an attorney, law student or law graduate directly supervised by a retained attorney, or an accredited representative; (3) the detainee's father could not serve as a qualified representative for detainee at a custody hearing; (4) appointment of a qualified representative to represent the detainee at a custody hearing was a reasonable accommodation under the Rehabilitation Act; (5) the likelihood of irreparable harm and the balance of hardships favored the detainee; and (6) a mandatory injunction was warranted. (Sacramento County Jail, California)

U.S. District Court
HARASSMENT
FAILURE TO PROTECT
TORTURE

Green v. *Floyd County, Ky*., 803 F.Supp.2d 652 (E.D.Ky. 2011). The guardian for an inmate, who was severely beaten by fellow inmates during his incarceration, brought a § 1983 action against prison guards for injuries arising from the beatings. The defendants moved for judgment on the pleadings. The district court denied the motion. The court held that the § 1983 one-year statute of limitations was tolled (postponed) by a Kentucky statute since the inmate was "of unsound mind." According to the court, allegations that prison guards stood by while prison inmates led another inmate around by a leash and forced him to act like a dog were sufficient for the inmate's guardian to state a claim of the tort of outrage, under Kentucky law, against the prison guards. The guardian alleged that jail employees improperly classified the inmate, assigning him to a communal cell, and told his cellmates that he had pled guilty to abusing a minor. The guardian alleged that for several days, three of the defendant prison guards turned a blind eye as the cellmates brutally tortured the inmate. According to the guardian, one guard saw the cellmates lead the inmate around by a leash and merely asked them to remove it, and later "egged the prisoners on" by asking them "where's your dog tonight?" After prolonged beatings, the cellmates finally alerted the guards when it appeared the inmate might be dying. The guardian alleged that the inmate suffered a number of broken bones and was in a near-vegetative state, and that, as a result of his injuries, he was incapable of making decisions for himself. (Floyd County, Kentucky)

U.S. District Court
HARASSMENT

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
ADA- Americans with Disabilities Act
PROGRAMS
RA- Rehabilitation Act
DISCIPLINE

Keitt v. *New York City*, 882 F.Supp.2d 412 (S.D.N.Y. 2011). An inmate brought a pro se suit against a state, state agencies, a city, city agencies, and state and city officials, and corrections officers, claiming that he was dyslexic and that the defendants failed to accommodate his disability in the public school system and in education programs offered in juvenile detention facilities and adult correctional facilities, as well as in prison disciplinary proceedings. The court dismissed some claims and denied dismissal for other claims. The court held that the inmate's Individuals with Disabilities Education Act (IDEA) claims accrued for limitations purposes no later than the year in which he reached the age of 21, where under New York law, a child was no longer entitled to the protections and benefits of the IDEA after the age of 21 and did not have a right to demand a public education beyond that age. The court found that the inmate adequately alleged the personal involvement of the Commissioner of the New York Department of Correction in an alleged ongoing violation of the inmate's constitutional rights, stating a § 1983 claim against the Commissioner. The inmate alleged that: (1) he repeatedly gave the Commissioner complete details of the failures of a correctional facility to accommodate the his disability; (2) the

Commissioner had "full knowledge" of the refusal to accommodate from both grievances and disciplinary appeals; (3) the Commissioner had upheld every decision denying accommodation; and (4) the Commissioner failed to take action to remedy the ongoing violation. The court held that the inmate stated ADA and Rehabilitation Act claims for compensatory damages against state and correctional officials in their official capacities when he alleged that at least some of the accommodations he sought at a correctional facility would allow him to overcome obstacles to his meaningful participation in existing programs and existing educational services, without fundamentally altering the programs. The court noted that New York's continued acceptance of federal funds after 2001 waived its sovereign immunity with respect to the inmate's Rehabilitation Act claims arising after that date, where the state's continued acceptance of federal funds was a knowing relinquishment of its Eleventh Amendment immunity. The court ruled that the inmate's allegations suggested a discriminatory animus against him because of his alleged disability, dyslexia, and thus, 11th Amendment immunity did not apply to shield the state, state agencies and state employees from the inmate's ADA claims. (New York City Dept. of Correction-Rikers Island, State of New York Dept. of Corr'l. Services, Elmira Corr'l. Facility)

U.S. District Court
EXECUTION

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
CIVIL COMMITMENT
WORK

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
RA- Rehabilitation Act

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 Dept. of Corrections, South Bend Work Release Center, Indiana)

U.S. Appeals Court
FAILURE TO PROTECT
VICTIMS

McCauley v. *City of Chicago*, 671 F.3d 611 (7th Cir. 2011). The administrator of a decedent's estate brought a state court action against the City of Chicago and several of its officials, and the Illinois Department of Corrections (IDOC) and its director, alleging an equal protection violation arising from a shooting incident. The action was removed to federal court. The district court dismissed the action for failure to state a claim. After the district court denied the administrator's request for leave to conduct limited discovery in the hope of finding a basis for a personal-capacity equal-protection claim against the IDOC director, the administrator appealed. The appeals court affirmed. The court found that the administrator failed to state a Monell claim against the City for violation of the right to equal protection of the decedent, who was killed by her ex-boyfriend while he was in violation of parole. According to the court, the complaint contained only generalized legal allegations that the City failed to have specific policies in effect to protect victims of domestic violence from harm inflicted by those who violated parole or court orders of protection by committing acts of domestic violence. The court noted that the complaint did not contain factual allegations required to support plausibility of the claims, as the allegations were entirely consistent with lawful conduct, a lawful allocation of limited police resources. (Cook County, Illinois)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER
DISCIPLINE

Miller v. *Dobier*, 634 F.3d 412 (7th Cir. 2011). The plaintiff, who had been involuntarily committed under the Illinois Sexually Violent Persons Commitment Act, brought a § 1983 action against various officials of a state institution who served on committees that disciplined him, alleging the defendants denied him due process of law by failing to provide adequate procedural safeguards before disciplining him. The district court granted the defendants' motion for summary judgment, and the plaintiff appealed. The appeals court affirmed. The court held

that the disciplinary measures to which the civil detainee was subjected were not so atypical and significant as to constitute the deprivation of a liberty interest, and thus procedural due process protections were not triggered. (Rushville IYC, Illinois)

U.S. Appeals Court
CORRESPONDENCE
FREE SPEECH

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
FAILURE TO PROTECT

Starr v. *Baca*, 652 F.3d 1202 (9th Cir. 2011). A prisoner brought a § 1983 action for damages resulting from a violent attack he allegedly suffered while he was an inmate in a county jail. The district court dismissed the prisoner's supervisory liability claim for deliberate indifference against the sheriff in his individual capacity, and the prisoner appealed. The appeals court reversed and remanded. The court held that the inmate sufficiently alleged a supervisory liability claim of deliberate indifference against the sheriff in violation of the Eighth and Fourteenth Amendments based on allegations that the sheriff failed to act to protect inmates under his care despite his knowledge that they were in danger because of the culpable acts of his subordinates and despite his ability to take actions that would have protected them. The court noted that the complaint specifically alleged numerous incidents in which inmates in county jails had been killed or injured because of the culpable actions of the subordinates of the sheriff, that the sheriff was given notice of all of those incidents, was given notice, in several reports, of systematic problems in the county jails under his supervision that had resulted in deaths and injuries, and that the sheriff did not take action to protect inmates under his care despite the dangers created by the actions of his subordinates of which he had been made aware. (Los Angeles County Jails, California)

U.S. Appeals Court
NEGLIGENCE
DUE PROCESS

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
FALSE IMPRISONMENT
TORTURE

Tillman v. *Burge*, 813 F.Supp.2d 946 (N.D.Ill. 2011). A former prisoner, who served nearly 24 years in prison for rape and murder before his conviction was vacated and charges were dismissed, brought a § 1983 action against a city, county, police officers, police supervisors, and prosecutors, as well as a former mayor, alleging deprivation of a fair trial, wrongful conviction, a Monell claim, conspiracy under § 1985 and § 1986, and various state law claims. The defendants filed separate motions to dismiss. The district court granted the motions in part and denied in part. The court held that the former prisoner's allegations that police officers engaged in suppressing, destroying, and preventing discovery of exculpatory evidence, including instruments of torture used to coerce the prisoner's confession, stated a § 1983 claim against the police officers for a Brady violation, despite the officers' contention that the prisoner was aware of everything that he claimed was withheld at the time of the trial. The court found that the former prisoner's complaint, alleging that municipal officials acted in collusion with a former mayor and a state's attorney and high-ranking police officials to deflect public scrutiny of the actions of police officers that suppressed and prevented discovery of exculpatory evidence, which prolonged prisoner's incarceration, stated a § 1983 claim against municipal officials for deprivation of fair trial and wrongful conviction. According to the court, a prosecutor was not entitled to absolute immunity from the § 1983 complaint by the former prisoner, alleging that the prosecutor personally participated in the prisoner's interrogation and that of a codefendant, and then suppressed the truth concerning those events. The court found that the allegation put the prosecutor's conduct outside the scope of his prosecutorial function.

The court held that the complaint by the former prisoner, alleging that the former prosecutor encouraged, condoned, and permitted the use of torture against the prisoner in order to secure a confession, stated a § 1983 claim against the prosecutor for coercive interrogation, in violation of the Fifth and Fourteenth Amendments. The court noted that the allegations supported the inference that the prosecutor participated in an investigatory rather than a prosecutorial role. According to the court, the "Plaintiff's 46–page complaint sets forth an account of the murder of Betty Howard and Plaintiff's arrest and prosecution for that murder, including the torture he alleges he endured at the hands of Area 2 police officers. The complaint also details the history of torture at Area 2 and the alleged involvement of the various Defendants in that torture and in subsequent efforts to cover it up." (Cook County, Illinois)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER

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)

2012

U.S. District Court
ALIENS
TORTURE
MILITARY FACILITY

Al-Zahrani v. *Rodriguez*, 669 F.3d 315 (D.C.Cir. 2012). Survivors of detainees who died at the Guantanamo Bay Naval Base sued the United States and a host of government officials under the Alien Tort Claims Act (ATCA), the Federal Tort Claims Act (FTCA), and the Fifth and Eighth Amendments. The survivors asserted that the detainees had been subjected to physical and psychological torture and abuse, inadequate medical treatment and withholding of necessary medication, and religious abuse. The district court granted the government's motion to be substituted as the defendant on the ATCA claims and its motion to dismiss both the ATCA and the FTCA claims. The appeals court later denied the survivors' motion for reconsideration. The survivors appealed. The appeals court affirmed on other grounds. The appeals court held that habeas corpus statute amendments barred federal court jurisdiction over the action. (Guantanamo Bay Naval Base, Cuba)

U.S. Appeals Court
SEX OFFENDER

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. Appeals Court
EXECUTION
PRIVACY

Associated Press v. *Otter*, 682 F.3d 821 (9th Cir. 2012). A coalition of media corporations filed a § 1983 action alleging that a state's denial of the right to witness all stages of executions violated the First Amendment. The district court denied the plaintiffs' motion for a preliminary injunction, and they appealed. The appeals court reversed and remanded, finding that the plaintiffs were likely to prevail on the merits of their claim. The court held that the plaintiffs were likely to prevail, gaining access to all steps in the execution process, beginning with the condemned prisoner's entry into the execution chamber, through insertion of intravenous lines into his body, reading of the death warrant, and pronouncement of death. The state's asserted interests in protecting the dignity of condemned prisoners and the sensibilities of their family and fellow inmates, and in protecting the identity of medical team members who participated in the execution. The court noted that the state already offended the dignity of condemned inmates and the sensibilities of their families and fellow inmates by allowing strangers to watch as they were put to death, that medical team members could wear surgical garb to mask their identities, and there was no evidence that the state was unable to recruit and retain medical team members to participate in executions. (State of Idaho)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER
SEARCH
MEDICAL CARE

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
CONSPIRACY
CLASSIFICATION
DISCIPLINE

Brown v. *Hannah*, 850 F.Supp.2d 471 (M.D.Pa. 2012). An inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The officials filed a motion to dismiss and the district court granted the motion. The district court held that: (1) the inmate did not have a liberty interest in remaining free from disciplinary confinement; (2) placement in confinement was not an atypical and significant hardship; (3) the inmate did not have a constitutionally protected right in the prison setting to use inappropriate, disrespectful, and derogatory language to a prison official; (4) rejection of his grievance was not an attempt to frustrate his ability to pursue a lawsuit; and (5) allegations were insufficient to state a conspiracy claim. (State Correctional Institution, Huntingdon, Pennsylvania)

U.S. District Court
VICTIMS
FAILURE TO PROTECT
SEX OFFENDER

Carmichael v. *City of Cleveland*, 881 F.Supp.2d 833 (N.D.Ohio 2012).The estate of a murder victim brought an action against police officers, cities, and other defendants under § 1981, § 1983, and state law. The defendants moved for dismissal and judgment on the pleadings. The district court granted the motions. The court held that the wrongful death claims brought by the estate of the murder victim against the County Board of Commissioners, alleging actions or inactions of the County through its officials and employees, with respect to the monitoring of the murderer as a registered sex offender, were based on the County's provision or non-provision of police services or protection, and/or enforcement of the law, and therefore they fell within the general grant of immunity in the Ohio Political Subdivision Tort Liability Act for political subdivisions engaged in governmental functions. The court found that the wrongful death claims brought by the estate against the Ohio Department of Rehabilitation and Corrections (ODRC) were barred by the Eleventh Amendment, since the ODRC had not consented to suit in the district court. The court noted that as a state agency, ODRC is not a "person" that can be held liable for money damages under § 1983. (Ohio Department of Rehabilitation and Corrections, Cuyahoga County Board of Commissioners, Ohio)

U.S. District Court
EQUAL PROTECTION
SEX OFFENDER

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
SEX OFFENDER

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
SEX OFFENDER
DUE PROCESS
EQUAL PROTECTION

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
SEX OFFENDER
DUE PROCESS
EQUAL PROTECTION

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
ACCESS TO COURT
CONDITIONS

Gay v. *Chandra*, 682 F.3d 590 (7th Cir. 2012). A prisoner sued three mental health professionals at the prison alleging constitutionally inadequate treatment and retaliation for a prior lawsuit. The district court required the cost bond without evaluating the merit or lack of merit of the prisoner's claims, and then dismissed the case with prejudice when prisoner did not post the bond he could not afford, and the prisoner appealed. The appeals court reversed and remanded. The court held that the district court abused its discretion in failing to consider the prisoner's current ability to afford a bond before requiring one as a condition of prosecuting a civil rights lawsuit. The court noted that a court's authority to award costs to a prevailing party implies a power to require the posting of a bond reasonably calculated to cover those costs, even though no statute or rule expressly authorizes such an order. The court may require a bond where there is reason to believe that the prevailing party will find it difficult to collect its costs when the litigation ends. The appeals court described the plaintiff as a "deeply disturbed Illinois inmate with a long history of self-mutilation." (Tamms Correctional Center, Illinois)

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

Gibson v. *City Municipality of New York*, 692 F.3d 198 (2nd Cir. 2012). A detainee in the custody of a state's mental health commissioner filed a civil rights action against city officials. The district court dismissed the complaint, and the detainee appealed. The appeals court affirmed. The appeals court held that the detainee was a "prisoner" within the meaning of the Prison Litigation Reform Act (PLRA). According to the court, a detainee in the custody of the state's mental health commissioner pursuant to a temporary order of observation was a "prisoner" within the meaning of PLRA, and thus could not proceed in forma pauperis in a civil rights action against city officials because of his previous frivolous filings, where the criminal proceedings against the detainee were merely suspended during his confinement and observation, and would only terminate if he was still being held at the time a temporary order expired or the criminal charges at issue were otherwise dropped. (Kirby Forensic Psychiatric Facility, New York)

U.S. Appeals Court
MEDICAL CARE

Gonzalez v. *U.S.*, 681 F.3d 949 (8th Cir. 2012). A former federal inmate filed suit under the Federal Tort Claims Act (FTCA), alleging that employees of the United States negligently caused a significant delay in the proper treatment of leg injuries that he suffered while playing softball in federal custody. Following a bench trial, the district court found the government liable and awarded compensatory damages of $813,000. The government appealed. The appeals court affirmed, finding that the damages award of $813,000 was not excessive. According to the court, the award was not excessive for the former federal inmate's pain and suffering and mental anguish suffered from the morning he sought medical treatment for an injury to his left leg and ankle sustained in a prison-sanctioned softball game until the date x-rays were taken approximately one month later, and the pain and suffering and mental anguish reasonably certain to be experienced for the remainder of the former inmate's expected life, which the district court determined to be 22 years, where the government breached a duty of care by failing to treat the ankle in four weeks prior to the taking of x-rays, and the inmate suffered a continuing injury following his surgery. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. District Court
FREE SPEECH AND ASSOCIATION
FALSE ARREST
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. According to the court, the musician's allegations that the county had policy or custom that was the moving force behind the alleged violation of the musician's First, Fourth, and Fourteenth Amendment rights, and that the policy/custom encouraged the confinement of the musician in response to his use of an American flag during a concert for allegedly expressive purposes, stated a § 1983 claim against the 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
AIDS- Acquired Immune Deficiency Syndrome
ADA- Americans with Disabilities Act
CLASSIFICATION
MEDICAL CARE
PROGRAMS
RA- Rehabilitation Act
TRANSFERS
WORK

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
SEX OFFENDER
CIVIL COMMITMENT
QUALIFIED IMMUNITY

Hydrick v. *Hunter*, 669 F.3d 937 (9th Cir. 2012). 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 conditions of their confinement. The district court denied the defendants' motion to dismiss, and the defendants filed an interlocutory appeal. The appeals court affirmed in part and reversed in part. Certiorari was granted. The United States Supreme Court vacated and remanded. On remand, the appeals court held that the defendants were entitled to qualified immunity. According to the court, the civilly committed persons failed to plead plausible claims against the state hospital's administrators and supervisory officials in their individual capacities, and thus the administrators and officials were entitled to qualified immunity from liability for money damages under § 1983, where there was no allegation of a specific policy or custom that caused constitutional deprivations, and no specific allegations regarding each defendant's purported knowledge of deprivations. (Atascadero State Hospital, California)

U.S. District Court
EQUAL PROTECTION
EXECUTION

In re Ohio Execution Protocol Litigation, 906 F.Supp.2d 759 (S.D.Ohio 2012). Following consolidation of several § 1983 actions brought by state death row inmates to challenge the constitutionality of various facets of a state's execution protocol, one inmate moved for a stay of execution, a temporary restraining order (TRO), and a preliminary injunction. The district court denied the motion, finding that the inmate was not likely to succeed on the merits of his equal protection claim. The inmate alleged that the state's execution policy, including its allegedly discretionary approach to written execution protocol and informal policies, violated his right to equal protection by codifying the disparate treatment of similarly situated individuals without sufficient justification, entitling him to a stay of execution. (Ohio Department of Rehabilitation and Correction)

U.S. Appeals Court
ADA- Americans with Disabilities Act
RA- Rehabilitation Act

Jaros v. *Illinois Dept. of Corrections*, 684 F.3d 667 (7th Cir. 2012). A former inmate sued the Illinois Department of Corrections, its Director, and several employees claiming violations of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Eighth Amendment. The district court dismissed the complaint for failure to state a claim, and the former inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the inmate's allegations that his use of the toilets and showers at the prison was made more difficult by the absence of grab bars did not state an Eighth Amendment claim, where the inmate was able to shower four times a month. He also missed meals on occasion because he could not walk fast enough to the cafeteria. The court found that the prisoner pleaded a plausible claim for failure to make reasonable accommodations under the Rehabilitation Act where he alleged that the Department of Corrections refused to accommodate his disability, and consequently kept him from accessing meals and showers on the same basis as other inmates. (Vandalia Correctional Center, Illinois)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER

Lane v. *Williams*, 689 F.3d 879 (7th Cir. 2012). Convicted sex offenders who, after completing their sentences, remained in state custody as civil detainees pursuant to the Illinois Sexually Violent Persons Commitment Act, brought a § 1983 action, alleging constitutional problems with the conditions of their confinement at a treatment facility. The district court granted summary judgment to the defendants and the detainees appealed. The appeals court affirmed. The appeals court held that security restrictions on face-to-face interactions between the civil detainees held in different units within the state's treatment facility for sexually violent persons (SVP) did not constitute treatment decisions which, as a matter of due process, had to be made by health professionals, merely because the security restrictions affected treatment options. The court found that requiring the civil detainees to use United States Mail, rather than the facility's internal mail system, to send letters to detainees in the facility's other units did not violate the detainees' First Amendment associational rights, even if the facility's internal mail system was a superior means of sending letters. The court noted that commitment under the Illinois Sexually Violent Persons Commitment Act is civil and may be for purposes such as incapacitation and treatment, but not for punishment. As a general matter, persons who have been involuntarily civilly committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. (Rushville Treatment and Detention Center, Illinois)

U.S. Appeals Court
INVOLUNTARY SERVITUDE
PRETRIAL DETAINEE
WORK

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. Supreme Court
JUVENILE
SENTENCE

Miller v. *Hobbs*, 132 S.Ct. 2455 (2012). Following transfer from a state juvenile court to a state circuit court, a defendant was convicted of capital murder, for an offense he committed when he was 14 years old. The defendant appealed his conviction and the resulting sentence of life in prison without the possibility of parole. The state appeals court affirmed. The U.S. Supreme Court combined this case with another similar case. The court reversed and remanded, finding that that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. (Alabama)

U.S. Appeals Court
ALIENS

Mirmehdi v. *U.S.*, 689 F.3d 975 (9th Cir. 2012). Aliens who were not lawfully in the United States filed an action against the United States seeking monetary damages on a claim of constitutionally invalid detention, inhumane detention conditions, witness intimidation, and the intentional infliction of emotional distress. The district court dismissed some claims and the parties settled the remaining claims. The plaintiffs appealed. The appeals court affirmed. The appeals court held that: (1) *Bivens* did not provide a remedy for aliens not lawfully in United States to sue federal agents for monetary damages for wrongful detention pending deportation; (2) the aliens had not been prejudiced by witness intimidation; and (3) the decision to detain an alien pending resolution of immigration proceedings fell within the discretionary function exception to a waiver of sovereign immunity under the Federal Tort Claims Act (FTCA). (U.S. Immigration and Naturalization Service, California)

U.S. District Court
VERBAL HARASSMENT
FAILURE TO PROTECT
USE OF 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
FALSE ARREST
FALSE IMPRISONMENT
LIABILITY

Northfield Ins. Co. v. *City of Waukegan*, 701 F.3d 1124 (7th Cir. 2012). Insurers that, pursuant to commercial general liability policies, provided law enforcement liability coverage to a city and its employees acting within the scope of their employment, brought a declaratory judgment action, seeking declarations that they had no duty to defend or indemnify the city or its employees in a third-party action in which a civil rights plaintiff alleged that the city and its police officers played a role in his wrongful conviction. The district court granted summary judgment for the insurers and the defendants appealed. The appeals court affirmed, finding that coverage did not exist for a claim alleging false arrest and imprisonment. (Waukegan, Illinois)

U.S. Appeals Court
DUE PROCESS
FAILURE TO PROTECT
MEDICAL CARE
MENTAL ILLNESS

Paine v. *Cason*, 678 F.3d 500 (7th Cir. 2012). The guardian of the estate of an arrestee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a municipality and police officers, alleging civil rights violations in connection with the arrest and subsequent release from custody without being provided access to mental health treatment. The arrestee was raped at knifepoint after her release and either jumped or was pushed from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly a established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognizance bond and collecting possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (Eighth District Station, Second District Station, Chicago Police Department)

U.S. District Court
MEDICAL CARE
RESPONDEAT
SUPERIOR
DUE PROCESS

Patel v. *Moron*, 897 F.Supp.2d 389 (E.D.N.C. 2012). A federal prisoner brought a *Bivens* action against prison officials, alleging, among other things, deliberate indifference to his medical needs in violation of the Eighth Amendment, violation of due process, retaliation in violation of the First Amendment, and denial of access to courts. The defendants moved to dismiss for failure to state a claim and for a protective order and stay, and the prisoner moved for a temporary restraining order, for a continuance to permit discovery, and to strike portions of the defendants' motion to dismiss. The district court held that: (1) the prisoner was not responsible for failure to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA); (2) the prisoner's allegations were sufficient to state an Eighth Amendment deliberate indifference claim; (3) the prisoner's allegations were sufficient to state a due process claim that he was placed in solitary confinement in violation of the Bureau of Prison's regulations and without having a legitimate investigation or a pending disciplinary charge; and (4) the allegations were sufficient to state a claim of retaliation in violation of the First Amendment. The court dismissed claims that were based on the theory of respondeat superior. According to the court, prison officials' refusal to provide grievance forms and interference with the prisoner's efforts to exhaust administrative remedies did not violate the prisoner's First Amendment right of access to courts. (Federal Correctional Center in Butner, North Carolina, and Rivers Correctional Institution, operated by the GEO Group, Inc)

U.S. Appeals Court
EQUAL PROTECTION
RACIAL
DISCRIMINATION
WORK

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 Corr'l. Facility, New York)

U.S. District Court
DUE PROCESS
FALSE ARREST
FALSE IMPRISONMENT
NEGLIGENCE

Ruffins v. *Department of Correctional Services*, 907 F.Supp.2d 290 (E.D.N.Y. 2012). A plaintiff brought a § 1983 action against a state's Department of Correctional Services (DOCS) and its commissioner and several employees, and the state's Division of Parole and its chairperson and several employees, alleging wrongful detention for violations of an allegedly illegally-imposed term of post-release supervision (PRS), false arrest and imprisonment, negligence, and a New York state claim for gross negligence. The defendants moved to dismiss. The district court granted the motion. The court held that the individual defendants, who were employees of New York's Department of Correctional Services (DOCS) or Division of Parole, were entitled to qualified immunity for their actions during the time between the administrative imposition of a term of post-release supervision (PRS) and a court decision, which found that such imposition of PRS violated due process guarantees. (New York State Division of Parole, Department of Correctional Services for the State of New York)

U.S. Appeals Court
SEX OFFENDER

Schepers v. *Commissioner, Indiana Dept. of Correction*, 691 F.3d 909 (7th Cir. 2012). Persons required to register on Indiana's sex and violent offender registry brought a putative class action against the Indiana Department of Correction (DOC) pursuant to § 1983, alleging that failure to provide a procedure to correct errors violated Fourteenth Amendment due process. The district court granted summary judgment for the DOC and the registrants appealed. The appeals court reversed and remanded. The appeals court held that the DOC had sufficient responsibility under state law and in practice over registry to be compelled to provide potential relief. The court noted that the DOC, under state law, was ultimately responsible for the creation, publication, and maintenance of the registry, the DOC contracted with a sheriff's association to publish the registry, and the DOC decided what information was to be displayed. The court found that policies for review of information on the registry were inadequate, noting that there was no process whatsoever for registrants who were not incarcerated, that not all registrants were first incarcerated, and there was no guarantee mistakes would not be made later after a registrant was released from incarceration. (Indiana Sex and Violent Offender Registry, Indiana Department of Correction)

U.S. District Court
EXHAUSTION

Sieverding v. *U.S. Dept. of Justice*, 910 F.Supp.2d 149 (D.D.C. 2012). A litigant who had been arrested and detained for civil contempt based on abusive litigation practices brought a pro se Freedom of Information Act (FOIA), and Privacy Act claims against the Department of Justice (DOJ). The DOJ moved for summary judgment. The district court granted the motion. The court held that the litigant failed to exhaust her administrative remedies in her action to obtain documents from the United States Marshals Service (USMS) related to her arrest and detention for civil contempt. The litigant and her husband originally sued dozens of individuals and entities for damages arising out of a property dispute with her neighbors in Idaho. (U.S. Dept. of Justice, Washington, D.C.)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER

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
VOTING

Swann v. *Secretary, Georgia*, 668 F.3d 1285 (11th Cir. 2012). A former inmate at a county jail brought a civil rights action against a state and county officials, alleging that the officials failed to mail him a presidential absentee ballot at the jail. The district court granted summary judgment in favor of the defendants. The former inmate appealed. The appeals court vacated and remanded with instructions. The appeals court held that the former inmate lacked standing to bring an action against county officials for their failure to mail him an absentee ballot for the presidential election at the county jail, where the inmate's non-receipt of a ballot was not fairly traceable to any action of the officials, but only to inmate's own conduct, since the inmate failed to provide the address of the jail on his absentee ballot application. (DeKalb County Jail, Georgia)

U.S. Appeals Court
CIVIL COMMITMENT
MENTAL ILLNESS
SEX OFFENDER

U.S. v. *Wetmore*, 700 F.3d 570 (1st Cir. 2012). The government brought an action seeking the civil commitment of an inmate as a "sexually dangerous person" under the Adam Walsh Child Protection and Safety Act. The district court entered an order directing the inmate's commitment, and the inmate appealed. The appeals court affirmed. The court found that the inmate was "in the custody of the Bureau of Prisons" (BOP) when the civil commitment proceeding was instituted, the inmate had been diagnosed with pedophilia, and with paraphilia characterized by hebephilia and therefore suffered from a "serious mental illness, abnormality, or disorder," as required for him to be subject to civil commitment. According to the court, evidence clearly and convincingly showed that the inmate would have serious difficulty refraining from child molestation if he were released. (Federal Bureau of Prisons, Massachusetts)

U.S. Appeals Court
INVOLUNTARY COMMITMENT
CIVIL COMMITMENT
SEX OFFENDER
DUE PROCESS
EQUAL PROTECTION

U.S. v. *Wooden*, 693 F.3d 440 (4th Cir. 2012). The government commenced a proceeding to commit an inmate as a "sexually dangerous person" under the civil-commitment provisions of the Adam Walsh Child Protection and Safety Act (Act). The district court dismissed the government's petition and ordered the inmate released. The government appealed. The appeals court reversed and remanded. The appeals court held that: (1) application of the Act to the inmate did not violate Due Process or Equal Protection; (2) the district court's determination that the inmate no longer suffered from pedophilia, and therefore did not suffer from a serious mental illness, abnormality or disorder, was clearly erroneous; and (3) the district court's determination that the inmate would not have "serious difficulty refraining from sexually violent conduct or child molestation if released" was clearly erroneous. (Federal Correctional Institute, Butner, North Carolina)

U.S. Appeals Court
CLASSIFICATION
DUE PROCESS
PLRA- Prison Litigation Reform Act
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
HABEAS CORPUS
INVOLUNTARY COMMITMENT

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
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. Appeals Court
ADA- Americans with Disabilities Act
DISCRIMINATION
RA- Rehabilitation Act

Armstrong v. *Brown*, 732 F.3d 955 (9th Cir. 2013). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, the plaintiffs moved for an order requiring officials to track and accommodate the needs of the class members housed in county jails and to provide a workable grievance procedure. The prisoners and parolees filed a renewed motion, which the district court granted. The defendants appealed. The appeals court affirmed in part and dismissed in part. The court held that: (1) Amendments to the California Penal Code relating to the legal custody of parolees did not relieve officials of responsibility for the discrimination suffered by disabled parolees housed in county jails, past and present, or of their obligation to assist in preventing further Americans with Disabilities Act (ADA) violations; and (2) orders requiring officials to track and accommodate the needs of disabled prisoners and parolees housed in county jails and to provide a workable grievance procedure were consistent with the Americans with Disabilities Act (ADA) and the Rehabilitation Act and did not infringe on California's prerogative to structure its internal affairs. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
CIVIL COMMITMENT
PRIVACY
SEARCH
SEX OFFENDER

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
RACIAL DISCRIMINATION

Barnes v. *Ross*, 926 F.Supp.2d 499 (S.D.N.Y. 2013). A mentally ill inmate brought a § 1983 action against the Commissioner of the New York Department of Corrections and Community Supervision (DOCCS) and employees of the New York Office of Mental Health asserting Eighth Amendment and equal protection claims. The mentally ill African-American inmate alleged that he and other minorities were subject to discriminatory treatment because of their race, in that white inmates were sent to the hospital for proper treatment, while African-Americans and Latino inmates were placed in observation for long periods and then were sent back to their cells, where they would harm themselves or try to commit suicide. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) requirements of class certification were not satisfied; (2) the inmate failed to plausibly allege an Eighth Amendment claim of deliberate indifference to his serious medical needs; (3) the inmate stated a claim of racial discrimination in violation of the Equal Protection Clause; (4) the inmate adequately alleged the personal involvement of an employee; but (5) the inmate did not adequately allege the personal involvement of the Commissioner. The court held that the employees were not entitled to qualified immunity because the right of a prisoner to be free from racial discrimination was clearly established, and the inmate adequately alleged that the employees intentionally discriminated against him on account of his race. (Sullivan Correctional Facility, New York)

U.S. Appeals Court
CONDITIONS
DUE PROCESS
HYGIENE
MEDICAL CARE
OVERCROWDING

Budd v. *Motley*, 711 F.3d 840 (7th Cir. 2013). A state inmate filed a § 1983 action alleging that, as a pretrial detainee, he was subjected to unconstitutional conditions of confinement at a county jail and that the sheriff was deliberately indifferent to his medical needs. The district court dismissed the complaint, and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the detainee's allegations were sufficient to state a plausible claim under the Due Process Clause for subjecting him to unconstitutional conditions of confinement. The prisoner alleged that: (1) on one occasion he was confined with eight inmates in a portion of the county jail intended for three; (2) he had to sleep on the floor alongside broken windows and cracked toilets; (3) on another occasion he and other inmates had to sleep on the floor even though shower water leaked there; (4) cells had broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and spider webs, and a broken heating and cooling system; (5) inmates were denied any recreation; and (6) the jail furnished inmates with no supplies to clean for themselves.

The appeals court found that county jail officials were not deliberately indifferent to the pretrial detainee's serious medical needs, in violation of the Due Process Clause even if he was dissatisfied with the treatment he received from a jail nurse. The court noted that the detainee was taken to see a nurse as soon as he informed the officer on duty about his leg wound, he was taken to a hospital promptly after writing a letter to the sheriff asking to see a doctor, and the detainee received medical attention, medication, testing, and ongoing observation at the hospital. (Edgar County Jail, Illinois)

U.S. Appeals Court
ADA- Americans with Disabilities Act
RA- Rehabilitation Act
WORK

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
CONDITIONS
OVERCROWDING

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
MENTAL ILLNESS

Coleman v. *Brown*, 938 F.Supp.2d 955 (E.D.Cal. 2013). California state prisoners with serious mental disorders brought a class action against various prison and state officials, alleging failure to provide mental care in violation of the Eighth Amendment. After a three-judge court found that overcrowding was the primary cause of ongoing constitutional violations, and was affirmed by the United States Supreme Court, officials moved to terminate all prospective relief and vacate the judgment. The district court denied the motion, holding that: (1) there remained an ongoing violation of the Eighth Amendment in inadequate assessment, treatment, or intervention regarding prisoner suicides; (2) prisoners placed in administrative segregation units continued to face a substantial risk of harm; (3) prisoners continued to face delays in access to care; (4) prisons continued to have shortages in treatment space and access to beds; and (5) officials were deliberately indifferent in implementing policies to remedy the Eighth Amendment violations. (California Department of Corrections and Rehabilitation)

U.S. District Court
LAW LIBRARIES
ACCESS TO COURT

Cox v. *LNU*, 924 F.Supp.2d 1269 (D.Kan. 2013). A state inmate brought a pro se civil rights action in state court. The defendants removed the action to federal court. The inmate moved to secure case law cited in the defendants' court filings and for the appointment of counsel. The district court denied the motions. The court held that: (1) the defendants were not required to furnish copies of unpublished cases that were available through electronic providers; (2) the court would not exercise its discretion to require the defendants to provide copies of published decisions; (3) the inmate's declaration that he was "broke" and had "no money or assets for anything" did not qualify as a motion to proceed in forma pauperis; and (4) even if the inmate qualified for in forma pauperis status, discretionary authority to request appointment of counsel would not be exercised. (Johnson County Jail, Kansas)

U.S. District Court
FALSE ARREST
FALSE IMPRISONMENT

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
FAILURE TO PROTECT
VERBAL HARASSMENT
CLASSIFICATION

Fletcher v. *Little*, 5 F.Supp.3d 655 (D.Del. 2013). A state prisoner brought a § 1983 action against a prison official, alleging that the official failed to protect him from an attempted rape by a known sexual offender and that she discriminated against him based on his sexual orientation as a homosexual. The prisoner filed motions to compel, for appointment of counsel, for partial summary judgment, and for a preliminary injunction, and the official filed a motion for summary judgment. The district court denied the prisoner's motions and granted the official's motion. The court held that the prison official was not deliberately indifferent to the risk that the prisoner would be assaulted by a cellmate because of the prisoner's homosexuality, where the official did not ignore the prisoner's concern. The court noted that before the assault, the official had the prisoner and cellmate removed from their cell and separately interviewed them. Each reported they feared the other, the official instructed them to "stop bickering" or face time in isolation, they agreed to stop and were returned to the cell, and when the official conducted a check 30 minutes later, the prisoner and cellmate were asleep in their beds. The court found that the prison official's alleged statements to the homosexual prisoner, including a comment that because he was a "gay man," he should expect harassment from other inmates who had "not been with a woman in a long time," and that he should "man-up and stop coming to jail," did not support an equal protection claim, no matter how offensive or derogatory the alleged statements were, because they were merely verbal abuse. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
ALIENS
DUE PROCESS

Gordon v. *Johnson*, 991 F.Supp.2d 258 (D.Mass. 2013). An alien, a lawful permanent resident who was subjected to mandatory detention pending removal five years after his arrest for narcotics possession, petitioned for a writ of habeas corpus on his own behalf and on behalf of a class of similarly situated individuals, seeking an individualized bond hearing to challenge his ongoing detention. The government moved to dismiss. The district court allowed the petition, finding that the phrase "when the alien is released" in the statute authorizing mandatory detention of criminal aliens meant "at the time of release," and that the petitioner was entitled to a bond hearing for consideration of the possibility of his release on conditions. (Franklin County Jail and House of Correction, Secretary of the Department of Homeland Security, Sheriff of Bristol County, Sheriff of Plymouth County, Sheriff of Suffolk County, Massachusetts)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
RACIAL DISCRIM-
INATION

Hernandez v. *Cate*, 918 F.Supp.2d 987 (C.D.Cal. 2013). An Hispanic state inmate, whose ethnicity was classified as "other," brought an in forma pauperis civil rights action against California Department of Corrections and Rehabilitation (CDCR) officials, alleging, among other things, that the officials discriminated against him on basis of his race, in violation of his equal protection and due process rights, and that the officials violated his Eighth Amendment right to be free from cruel and unusual punishment. The officials moved to dismiss the complaint for failure to state claim. The district court granted the motion in part and denied in part. The court held that state prison officials applied a suspect racial classification to Hispanic inmates, who were ethnically classified as "other," when the officials placed those inmates on modified program status in lockstep with the lockdown of Mexican inmates, while non-Hispanic inmates who associated with the Mexican inmates or disruptive inmates of other ethnic groups were not subjected to same lockstep treatment. According to the court, prison policies were not narrowly tailored to control prison disturbances, as required to survive strict scrutiny of the § 1983 equal protection claim brought by Hispanic inmate.

The court held that the state prison warden's authority and discretion to justify modified programs imposed on the Hispanic inmate and to deny the inmate relief at the administrative level were sufficient to show the warden's personal involvement in the alleged deprivations of the inmate's equal protection and Eighth Amendment rights so as to subject the warden to supervisory liability under § 1983. The court found that state prison officials were not entitled to qualified immunity from the § 1983 equal protection claim brought by the Hispanic inmate where it would have been clear to a reasonable official that it was unlawful to place the inmate on a modified program on the basis of his race, ethnicity, or national origin. (Ironwood State Prison, California Department of Corrections and Rehabilitation)

U.S. Appeals Court
FALSE IMPRISONMENT

Hernandez-Cuevas v. *Taylor*, 723 F.3d 91 (1st Cir. 2013). A pretrial detainee brought a Bivens action against FBI agents, alleging that the agents' unlawful conduct caused him to be held in custody for three months without probable cause. The district court denied the agents' motion to dismiss on qualified immunity grounds. The agents appealed. The appeals court affirmed and remanded. The court held that: (1) allegations by the detainee that FBI agents witnessed a black male, short, stocky, and in his late fifties, transfer $321,956 in drug proceeds to an undercover informant; (2) after a year passed without the FBI being able to locate or identify that suspect, they were under pressure to make an arrest; (3) agents worked with the informant to arrange a tainted photo array, during which informant identified the detainee, who was a tall, thin, 40-year-old, black male, and who had strikingly dissimilar appearance to the suspect; (4) that one agent either knowingly or with reckless disregard for the truth made sworn statements in a warrant affidavit identifying the detainee as the suspect who delivered the tainted cash; (5) that based on the affidavit, a magistrate issued an arrest warrant; and (6) that the detainee was bound over and held in federal custody for three months, stated a Bivens claim against agents for violation of detainee's Fourth Amendment rights. (Puerto Rico)

U.S. Appeals Court
HARASSMENT

Hogan v. *Fischer,* 738 F.3d 509 (2nd Cir. 2013). A pro se prisoner brought a § 1983 action against various correction officers alleging that three masked officers sprayed him with an unknown substance while he was in his cell. The substance was apparently a mixture of fecal matter, vinegar, and machine oil. The district court dismissed the complaint and the prisoner appealed. The appeals court vacated in part and remanded. The appeals court held that the prisoner stated a § 1983 claim against prison officials for cruel and unusual punishment in violation of the Eighth Amendment, by alleging the officials approached his cell wearing masks and proceeded to spray him with a mixture of feces, vinegar, and "some type [of] machine oil." The court found that the officials' alleged conduct was unequivocally contrary to contemporary standards of decency, and, given the

context, the assault obviously was not a good faith effort to maintain or restore discipline, but rather was an attempt to maliciously and sadistically cause harm. (Attica Correctional Facility, New York)

U.S. District Court
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. (Michigan Sex Offender Registry Act)

U.S. District Court
SEX OFFENDER
DUE PROCESS
DISCRIMINATION

Kvech v. *New Mexico Dept. of Public Safety*, 987 F.Supp.2d 1162 (D.N.M. 2013). A convicted Colorado sex offender who was on probation brought a § 1983 action against an employee of the New Mexico Department of Public Safety, alleging his placement on the New Mexico sex offender registry violated his Fourteenth Amendment rights. The employee moved for summary judgment based on qualified and statutory immunity. The district court granted the motion in part and denied in part. The court held that the employee's statement that the offender was a sex offender under New Mexico law was false, the statement was derogatory and injured the offender's reputation, and the employee imposed a burden on the offender that significantly altered the offender's legal status in New Mexico. The court held that the employee's refusal to remove the Colorado convicted sex offender from New Mexico's sex offender registry, despite the state court dismissing the failure to register charges, without any pre-determination notice or hearing, did not satisfy procedural due process for the purposes of the offender's Fourteenth Amendment stigma-plus procedural due process claim. According to the court, the employee determined that the offender was subject to the Sex Offender Registration and Notification Act (SORNA) without providing the offender any opportunity to contest her conclusion. But the court determined that the employee was entitled to qualified immunity because an offender's right to a pre-determination hearing before being placed on New Mexico's sex offender registry was not clearly established at the time. (State of New Mexico Department of Public Safety)

U.S. District Court
CIVIL COMMITMENT
FAILURE TO PROTECT

Lucia v. *City of Peabody*, 971 F.Supp.2d 153 (D.Mass. 2013). The administrator of the estate of an individual who died from acute and chronic substance abuse while in protective custody brought an action against a city and its mayor, as well as the police department, its chief, and four other individual officers, alleging claims under § 1983 for various constitutional violations and claims of negligence and false imprisonment under state law. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to call a treatment center; (2) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to monitor him and provide proper care; (3) the administrator failed to establish municipal liability based on failure to train; (4) the administrator failed to establish supervisory liability against the supervising officer; (5) police were immune from negligence liability under statutory exception to Massachusetts Tort Claims Act; and (6) the officers were not liable for false imprisonment. The court noted that at the time of the relevant events, a reasonable officer would not have known that determining that a suitable treatment facility was not available was a Fourth Amendment prerequisite to his ability to constitutionally detain an intoxicated individual who was not charged with any crime, as required for the right to be clearly established, and therefore the individual officers who detained the individual were entitled to qualified immunity under § 1983. (Peabody Police Department, Massachusetts)

U.S. Appeals Court
DUE PROCESS
EXECUTION

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. District Court
SMOKING

Mearin v. *Swartz*, 951 F.Supp.2d 776 (W.D.Pa. 2013). State inmates, proceeding pro se, brought an action against prison officials and employees, alleging that exposure to environmental tobacco smoke (ETS) violated the Eighth Amendment, as well as asserting First Amendment retaliation claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoners' allegations were sufficient to plead they were exposed to unreasonably high levels of environmental tobacco smoke (ETS), as required to state a § 1983 claim for violations of the Eighth Amendment against various prison officials and employees. One prisoner alleged that he was exposed to constant smoking by cellmates, inmates in neighboring cells, and by corrections officers and staff, which resulted in his suffering from constant coughs, headaches, chest pains, shortness of breath, vomiting, and fatigue. A second prisoner alleged that he was constantly exposed to second hand smoke by other inmates and employees while in certain housing, which

resulted in his suffering from constant headaches, coughs, dizziness, breathing difficulties, and burning sensations in his chest. The prisoners alleged that officials and employees had actual knowledge of their exposure to ETS and of the risks of harm to the prisoners' health, but failed to rectify conditions and to enforce the prison's zero tolerance smoking policy. The court found that the prisoners' allegations that they had made requests to unit managers to be housed with non-smoking cellmates, that the managers had knowledge of the prisoners' need to be housed with non-smokers, that the managers denied the requests, that the prisoners suffered various health conditions from exposure to smoke, and that the prisoners submitted grievances about smoke exposure, were sufficient to state a § 1983 claim against case managers for violations of the Eighth Amendment. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
DISCRIMINATION
RACIAL DISCRIMINATION
DUE PROCESS

Melendres v. *Arpaio*, 989 F.Supp.2d 822 (D.Ariz. 2013). Latino persons brought a class action against a sheriff and sheriff's office, seeking injunctive relief based on allegations of Fourth and Fourteenth Amendments violations in the policy of using race as a factor in determining reasonable suspicion and in investigating or detaining Latino occupants of motor vehicles suspected of being in the country without authorization, without any basis for state charges. The district court entered judgment for the plaintiffs. The court held that: (1) the policy of the sheriff's office directing deputies to detain vehicle occupants because of the belief that occupants were not legally present in the United States violated the Fourth Amendment; (2) the policy permitting deputies to use race or Hispanic appearance as a factor in determining whether there was reasonable suspicion violated the Fourth Amendment; (3) the policy permitting deputies to use race as a factor in forming reasonable suspicion that persons violated state laws relating to immigration status was not narrowly tailored; (4) the sheriff's office intentionally discriminated against Latino persons; (5) deputies investigating the identities of, and arresting, vehicle passengers on immigration violations without reasonable suspicion during a traffic stop lengthened the stop in violation of the Fourth Amendment; and (6) deputies could not use reasonable suspicion of unauthorized presence in the United States, without more, as probable cause or reasonable suspicion that a state law had been violated. (Maricopa County Sheriff, Arizona)

U.S. District Court
LOWER BUNK
ADA- Americans with Disabilities Act
PRETRIAL DETAINEES
MEDICAL CARE
HYGIENE
SANITATION

Newell v. *Kankakee County Sheriff's Department*, 968 F.Supp.2d 973 (C.D.Ill. 2013). A disabled federal detainee who was housed at a county jail for two months brought an action against the county sheriff's department and county officials under § 1983 and the Americans with Disabilities Act (ADA). The defendants moved to dismiss. The district court denied the motion. The court held that the detainee's allegations that the county officials developed, supervised, and enforced policies and practices of the jail, ensured that grievances were received in the proper manner and were properly responded to, and were aware of his serious medical needs and his grievances, yet turned a blind eye to the situation, were sufficient to state a claim against the officials in their individual capacities in his civil rights action alleging he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail. The detainee allegedly had multiple disabilities that he sustained in an auto accident, including weakness and numbness in his left side and he partially dragged his left leg. He also had incontinence with urine and bowel movements and required the use of adult diapers. He was unable to stand still without assistance, which made showering and using the toilet difficult. The detainee alleged that despite his obvious disabilities and medical issues, he was assigned to a regular dorm on the top floor of the jail, and a to a top bunk. He had to hop on one leg to go up or down the stairs and needed assistance from other inmates to get into and out of his bunk. He was allegedly not given adult diapers until his third day at the jail, and even then, he was not given an adequate supply of diapers and would sometimes sit in a soiled diaper for days, and in clothes with urine and feces on them. He alleged that he was not given enough biohazard bags, and the soiled diapers and bags piled up in his cell. One day, when there was no one to assist the detainee, he fell while attempting to get out of his bunk and he sat for two hours until someone came to help him. As a result, his left leg worsened and his right leg was numb, he could not walk at all and was forced to crawl down stairs on his buttocks, and scoot along the floor and walk on his hands.

The court found that the detainee's allegations that he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail, and that the jail was not an exceptionally large facility, were sufficient to state claim against the corrections officer working at the jail in his individual capacity. According to the court, the situation described by the inmate, if true, would have been obvious to any correctional officer working in the area in which the inmate was housed. The court held that the detainee's allegations that correctional staff at the county jail acted pursuant to an official policy or custom not to perform a medical intake, investigate inmates' medical issues or complaints about problems with walking if they were ambulatory, nor provide sufficient medically-necessary hygiene items such as adult diapers to inmates, among other things, were sufficient to allege that an official policy or custom was a “moving force” in the alleged violation of his rights, as required to state official capacity claims under Monell. The court held that the detainee's allegation that he was barred from basic facilities on the basis of his disabilities while he was housed at the county jail was sufficient to allege discriminatory intent, as required to state an ADA claim against the county sheriff's department. (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
FAILURE TO PROTECT
SEXUAL ABUSE

Pena v. *Greffet*, 922 F.Supp.2d 1187 (D.N.M. 2013). A female former state inmate brought a § 1983 action against a private operator of a state prison, the warden, and corrections officers, alleging violation of her civil rights arising under the Fourth, Eighth, and Fourteenth Amendments, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate’s complaint stated claims against the operator and the warden for violations of the Eighth and Fourteenth Amendment, and for First Amendment retaliation. The inmate alleged that the operator and the warden engaged in practices of placing inmates who reported sexual abuse in segregation or otherwise retaliating against them, violating its written policies by failing to report allegations of prison rape to outside law enforcement, failing to conduct adequate internal investigations regarding rape allegations, and offering financial incentives to prison

employees for non-reporting of rape allegations. The inmate alleged that the operator and the warden placed her in segregation for eight months because she reported a corrections officer's rape and another officer's assault, that the operator and warden were aware of her complaints, and that her placement in segregation was in close temporal proximity to the complaints. (New Mexico Women's Correctional Facility, Corrections Corporation of America)

U.S. Appeals Court
CIVIL COMMITMENT
INVOLUNTARY COMMITMENT
PROPERTY
SEX OFFENDER

Pesci v. *Budz*, 730 F.3d 1291 (11th Cir. 2013). A civil detainee, who was involuntarily committed as a sexually violent predator, brought a civil rights action against a facility director, claiming that the facility's policy barring residents from copying the detainee's newsletter violated his expressive freedoms under the First and Fourteenth Amendments. The district court granted final summary judgment in favor of the facility director, and the detainee appealed. The appeals court vacated and remanded. The court held that the constitutionality of the facility's policy of banning outright all possession and distribution of the detainee's newsletter should have been considered along with the facility's prior policy limiting the means of the newsletter's propagation in the ruling on the facility director's motion for summary judgment. The appeals court found that *Turner 's* rational relation standard was the appropriate standard against which to measure the detainee's First Amendment claims, however, the government could not justify limitation on the detainee's expressive freedoms based on retribution or general deterrence. (Florida Civil Commitment Center)

U.S. District Court
ADA- Americans with Disabilities Act
DUE PROCESS
EQUAL PROTECTION
FAILURE TO TRAIN
FALSE IMPRISONMENT
PRETRIAL DETAINEES

Poche v. *Gautreaux*, 973 F.Supp.2d 658 (M.D.La. 2013). A pretrial detainee brought an action against a district attorney and prison officials, among others, alleging various constitutional violations pursuant to § 1983, statutory violations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), as well as state law claims, all related to her alleged unlawful detention for seven months. The district attorney and prison officials moved to dismiss. The district court granted the motions in part and denied in part. The court held that the detainee sufficiently alleged an official policy or custom, as required to establish local government liability for constitutional torts, by alleging that failures of the district attorney and the prison officials to implement policies designed to prevent the constitutional deprivations alleged, and to adequately train their employees in such tasks as processing paperwork related to detention, created such obvious dangers of constitutional violations that the district attorney and the prison officials could all be reasonably said to have acted with conscious indifference. The court found that the pretrial detainee stated a procedural due process claim against the district attorney and the prison officials under § 1983 related to her alleged unlawful detention for seven months, by alleging that it was official policy and custom of the officials to skirt constitutional requirements related to procedures for: (1) establishing probable cause to detain; (2) arraignment; (3) bail; and (4) appointment of counsel, and that the officials' policy and custom resulted in a deprivation of her liberty without due process.

The court also found a procedural due process claim against the district attorney under § 1983 by the detainee's allegation that it was the district attorney's policy and custom to sign charging papers such as bills of information without reading them, without checking their correctness, and without even knowing what he was signing, and that the attorney's policy and custom resulted in a deprivation of her liberty without due process. The court found a substantive due process claim against the district attorney in the detainee's allegation that after obtaining clear direct knowledge that the detainee was being wrongfully and illegally held, the district attorney still failed to correct the mistakes that caused the detention, and to cover up his failures in connection with the case, the district attorney made a conscious decision to bring belated charges against the detainee.

The court held that the detainee stated an equal protection claim against the prison officials under § 1983, by alleging that the officials acted with a discriminatory animus toward her because she was mentally disabled, and that she was repeatedly and deliberately punished for, and discriminated against, on that basis. (East Baton Rouge Prison, Louisiana)

U.S. District Court
RACIAL DISCRIMINATION
FAILURE TO PROTECT
MENTAL ILLNESS
SAFETY
SECURITY

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
ALIEN
PRETRIAL DETAINEE

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
EXECUTION
DUE PROCESS

Sepulvado v. *Jindal*, 729 F.3d 413 (5th Cir. 2013). A state death-row prisoner filed an action against the Governor of Louisiana, the Louisiana Department of Public Safety and Corrections, and various state officials under § 1983, alleging, among other claims, that the state's refusal to disclose details of its execution protocol violated the Due Process Clause of Fourteenth Amendment. Another death-row prisoner intervened. The district court entered a preliminary injunction and a stay of execution. The state appealed. The appeals court reversed. The appeals court held that the prisoner failed to establish the likelihood of success on the merits of his claim that substitution of a one drug lethal injection protocol for a three drug protocol violated his procedural due process rights. The appeals court held that the district court abused its discretion by granting an untimely motion for a stay. (Louisiana Department of Public Safety and Corrections)

U.S. Appeals Court
ADA- Americans with Disabilities Act
DUE PROCESS
EQUAL PROTECTION
MEDICAL CARE
MENTAL ILLNESS

Spavone v. *New York State Dept. of Correctional Services*, 719 F.3d 127 (2nd Cir. 2013). A state prisoner brought a suit against corrections officials under § 1983 and the Americans with Disabilities Act (ADA), alleging, among other things, that the defendants' denial of his request for a medical leave to obtain additional treatment for his post-traumatic stress disorder (PTSD) violated his Fourteenth Amendment right to equal protection of the law and his Eighth and Fourteenth Amendment right to be free of cruel and unusual punishment. The prisoner had traveled to Nicaragua in the 1980s to join the Contra rebel forces and saw combat while fighting with them in that country's civil war. He also was working on the scaffolding of a building across the street from the World Trade Center on September 11, 2001, and was credited with risking his life to rescue several of his coworkers. He witnessed victims of the attack jump from the towers. The district court denied the defendants' motion for summary judgment based on qualified immunity, and the defendants appealed. The appeals court reversed and remanded. The appeals court held that the corrections officials were entitled to qualified immunity on prisoner's equal protection claim, and on the prisoner's Eighth Amendment claim. According to the court, even if the prisoner was in need of absolutely necessary medical care, neither official had reason to conclude that such care was not available to him in the prison, and thus there was a rational basis for distinguishing between leaves of absence for the treatment of mental illness as opposed to other sorts of illness for which leave was available. The court noted that there no evidence that either official thought that denying the prisoner's request for a leave of absence would cause him harm, much less harm so serious that it would be objectively unreasonable for them to believe that the policy of restricting leaves of absence for mental health treatment was consistent with prisoner's right to be free of cruel and unusual punishment. (New York State Department of Correctional Services)

U.S. District Court
ADA-Americans with Disabilities Act
FALSE IMPRISONMENT
PRETRIAL DETAINEES

Taylor v. *City of Mason*, 970 F.Supp.2d 776 (S.D.Ohio 2013). A deaf arrestee brought an action against a police department and a city, alleging that denial of a qualified interpreter during questioning prior to arrest at the jail violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and that he was falsely imprisoned. The defendants moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the deaf arrestee's allegations, that police officers denied him the benefits of effectively communicating with them prior to arrest by failing to provide an appropriate auxiliary aid, were sufficient to state a claim under ADA and Rehabilitation Act. The arrestee alleged that he initiated a phone call to police because he had been assaulted, and that, although officers requested an American Sign Language (ASL) interpreter, they did not wait for the interpreter to arrive before they began questioning him, but instead used his alleged attacker as an interpreter, and she reported that the arrestee sexually assaulted her. The court found that the allegations were also sufficient to state a claim under the Rehabilitation Act, where the arrestee alleged that

he expressed dissatisfaction with the interpreter provided at the jail, who was not certified in ASL, that he did not fully understand his Miranda rights as explained by the interpreter, and that the lack of a qualified interpreter was directed at him particularly. (City of Mason Police Department and Jail, Ohio)

U.S. District Court
PRIVACY
LIBEL

Von Kahl v. *Bureau of Nat. Affairs, Inc*., 934 F.Supp.2d 204 (D.D.C. 2013). A prisoner brought an action against a legal publisher, alleging libel in summary of his mandamus petition published more than 20 years after his criminal convictions. The court held that: (1) the publisher's statement that the prisoner "showed no hint of contrition" withrespect to the murders of deputy United States Marshals was actionable; (2) the prisoner was not "libel-proof"; (3) the prisoner was a limited purpose public figure, but the complaint alleged sufficient facts supporting a claim of actual malice; (4) the summary did not falsely impute that the prisoner had been accused of a crime and thus was not libelous per se; and (5) the prisoner pled sufficient facts showing special harm to support a claim for special damages. (Bureau of National Affairs, Inc., Criminal Law Reporter, District of Columbia)

U.S. District Court
ACCESS TO COURT

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)

U.S. District Court
FAILURE TO PROTECT
HARASSMENT
PRIVACY
SEXUAL ABUSE

Williams v. *Community Solutions, Inc*., 932 F.Supp.2d 323 (D.Conn. 2013). State prison inmates brought an action against state department of corrections (DOC) officials and others, alleging that they were subjected to sexual abuse, harassment, and threatening conduct at a residential reentry work-release program, and asserting both federal constitutional claims and state law tort claims. The state officials moved to dismiss. The district court granted the motion in part, and denied in part. The court held that the alleged sexual abuse, harassment, and threats perpetrated against the state prison inmates by staff did not rise to the level of a deprivation of the inmates' Eighth Amendment rights. According to the court, although staff allegedly stayed in the bathroom with inmates and watched them give urine samples, touched inmates on their buttocks and genitals on a few occasions, and made inappropriate comments toward inmates, such alleged conduct involved isolated incidents and was not sufficiently serious or severe to amount to cruel and unusual punishment. The court found that the inmates failed to state a Fourth Amendment claim for violation of their constitutional right to bodily privacy, absent an allegation of an invalid search or seizure. (Connecticut Department of Corrections, Residential Re-entry Work-Release Program, Community Solutions, Inc., Bloomfield Connecticut)

U.S. Appeals Court
VISITS

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
EXECUTION
FREE SPEECH AND ASSOCIATION

American Civil Liberties of Missouri Foundation v. *Lombardi*, 23 F.Supp.3d 1055 (W.D.Mo. 2014). An organization brought an action against the director of the Missouri Department of Corrections (DOC), challenging the constitutionality of a Missouri statute prohibiting unauthorized disclosure of execution team members. The director moved to dismiss. The district court denied the motion, finding that: (1) the organization had standing to bring the action; (2) the action was not barred by the Eleventh Amendment; (3) the organization stated viable claim under the First Amendment; and (4) the organization stated a viable due process claim. (Missouri Department of Corrections)

U.S. District Court
ALIENS

Arpaio v. *Obama*, 27 F.Supp.3d 185 (D.D.C. 2014). The Sheriff of Maricopa County, Arizona, brought an action against the President of the United States, alleging that executive actions deferring action with respect to certain programs affecting undocumented immigrants were unconstitutional and otherwise illegal. The sheriff moved for a preliminary injunction to enjoin the programs, and the President moved to dismiss for lack of subject matter jurisdiction. The district court dismissed the action. The district court held that the sheriff did not suffer an injury in fact, and therefore lacked standing in his personal and official capacities to bring an action. The court noted that the sheriff sought to vindicate only a general interest in the proper application of the Constitution and laws, and, although the sheriff alleged that undocumented immigrants had targeted him for assassination as a result of his "widely known stance on illegal immigration," the programs in question did not cause threats to the sheriff's life, and the sheriff's stance pre-existed the instant action and the challenged programs. (Maricopa County Sheriff, Arizona)

U.S. District Court
VOTING

Davidson v. *City of Cranston, R.I.*, 42 F.Supp.3d 325 (D.R.I. 2014). Citizens brought an action against a city, challenging a municipal ward redistricting plan, in which the entire population of a state prison was placed within one of the city's six wards. The city moved to dismiss. The district court denied the motion. The court held that the citizens alleged that the redistricting plan was not justified by the principle of electoral equality, and that the plan was not justified by the principle of representational equality. The court noted that the majority of the prisoners in the state prison were not eligible to vote, and that the prisoners who were eligible to vote were required by Rhode Island law to vote by absentee ballot from their pre-incarceration address. (City of Cranston, Rhode Island, and Rhode Island Adult Correctional Institutions)

U.S. Appeals Court
FALSE IMPRISONMENT

Fields v. *Wharrie,* 740 F.3d 1107 (7th Cir. 2014). A former prisoner who was wrongfully convicted of murder and sentenced to death brought an action against, county prosecutors, among others, alleging a § 1983 claim of violation of his due process rights and related state tort claims. The former prisoner had been incarcerated for 17 years before the conviction was overturned. The district court partially granted and partially denied a defense motion to dismiss. The defendants appealed. The appeals court reversed and remanded. On remand, the former prisoner moved for reconsideration. The district court granted the motion for reconsideration and vacated its prior order to the extent that it dismissed the former prisoner's federal claim against prosecutor arising from the prosecutor's pre-prosecution fabrication of evidence, and retained jurisdiction over the state claims. The prosecutors appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the prosecutor did not have absolute or qualified immunity from § 1983 claims arising out of his pre-prosecution fabrication of evidence that was later introduced at trial; (2) the prosecutor did not have absolute immunity under Illinois law for his pre-prosecution fabrication of evidence that was later introduced at trial; and (3) remand was required to allow reconsideration of the determination that the prosecutor did not have immunity from state law claims arising out of use of fabricated evidence at retrial. The court noted that absolute immunity afforded to prosecutors is only for acts they commit within the scope of their employment as prosecutors; when they do non-prosecutorial work they lose their absolute immunity and have only qualified immunity. (Illinois)

U.S. District Court
ALIENS
DUE PROCESS

Gayle v. *Johnson*, 4 F.Supp.3d 692 (D.N.J. 2014). Aliens brought a class-action lawsuit against the Department of Homeland Security (DHS) and numerous other federal and state government agencies, alleging that the defendants' acts of subjecting individuals to mandatory immigration detention violated the Immigration and Nationality Act (INA) and the Due Process Clause. The government moved to dismiss. The district court declined to dismiss the alien's claims for injunctive relief, finding that the aliens had standing to challenge the adequacy of the *Joseph* hearing and associated mandatory detention procedures, and that allegations that the Joseph hearings failed to afford aliens adequate protection were sufficient to state claims for due process violations. (Department of Homeland Security, Immigration and Customs Enforcement, District of New Jersey)

U.S. District Court
PRIVACY
DISCIPLINE
CONDITIONS

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
EXECUTION

In re Ohio Execution Protocol Litigation, 994 F.Supp.2d 906 (S.D.Ohio 2014). An inmate, who was scheduled to be executed, brought a challenge to Ohio's two drug execution protocol of midazolam and hydromorphone, claiming that the protocol would subject him to a substantial risk of severe pain that would constitute cruel and unusual punishment, in violation of the Eighth Amendment. The inmate moved for a stay of execution. The district court denied the motion. The court held that the inmate's physical and medical characteristics which placed the inmate at risk for obstructive sleep apnea did not preclude the use of Ohio's two drug execution protocol on the grounds that the protocol would subject the inmate to a substantial risk of severe pain, in violation of the Eighth Amendment. According to the court, expert testimony that the inmate would experience air hunger, or a terrifying inability to obtain a breath to satisfy the ventilatory drive, failed to consider the execution protocol's use of a massive dose of hydromorphone, an analgesic. (State of Ohio)

U.S. District Court
CIVIL COMMITMENT
DUE PROCESS
PROGRAMS
RELIGION
SEARCH
SEX OFFENDER

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 held that the patients' allegations that commitment to MSOP essentially amounted to lifelong confinement, equivalent to a lifetime of criminal incarceration in a facility resembling, and run like, a medium to high security prison, sufficiently stated a § 1983 substantive due process claim pertaining to the punitive nature of the patients' confinement. 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. 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,. The court ordered that its court-appointed experts would be granted complete and unrestricted access to the documents the experts requested, including publicly available reports and documents related to the patients' lawsuit, as well as MSOP evaluation reports and administrative directives and rules. (Minnesota Sex Offender Program)

U.S. Appeals Court
ALIENS
DUE PROCESS

Lopez-Valenzuela v. *Arpaio*, 770 F.3d 772 (9th Cir. 2014). A felony arrestee brought an action against state officials challenging the constitutionality of an Arizona constitutional provision prohibiting state courts from setting bail for detainees who were in the United States illegally. The district court granted summary judgment and partial dismissal in the officials' favor, and the arrestees appealed. The appeals court affirmed. On rehearing en banc, the appeals court reversed and remanded. The court held that the Arizona constitutional provision forbidding any form of bail or pretrial release to undocumented immigrants arrested for serious felony offenses, without regard to whether they were dangerous or a flight risk, was not narrowly tailored to serve a compelling state interest in ensuring that persons accused of crimes be available for trial, and thus violated substantive due process. The court noted that there was no evidence that the provision was adopted to address a particularly acute problem regarding an unmanageable flight risk of undocumented immigrants, the provision encompassed an exceedingly broad range of offenses, including not only serious offenses but also relatively minor ones, and the provision employed an overbroad, irrebuttable presumption, rather than an individualized hearing, to determine whether a particular arrestee posed an unmanageable flight risk. (Maricopa County Sheriff, Maricopa County Attorney, and Presiding Judge of the Maricopa County Superior Court)

U.S. Appeals Court
SEX OFFENDER

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. District Court
CIVIL COMMITMENT
MENTAL ILLNESS

Pierce v. *Pemiscot Memorial Health Systems*, 25 F.Supp.3d 1198 (E.D.Mo. 2014). A mental health detainee brought a § 1983 action against a medical director and a program director employed by the company that contracted to provide psychiatric services to a county hospital, alleging violations of her due process rights and Missouri law. The parties cross-moved for summary judgment. The district court denied the motion, granted the defendants' motion in part and denied in part. The court held that summary judgment on the issue of punitive

damages was precluded by genuine issue of material fact as to whether the conduct of the medical director and the program director in continuing to detain the mental health detainee was motivated by an evil motive or involved reckless indifference to the detainee's rights. The detainee brought the action to challenge her detention in an inpatient psychiatric unit following the expiration of a 96–hour detention order. She alleged that her continued detention violated her due process rights under the United States and Missouri Constitutions, governing involuntary commitment procedures. (Pemiscot Memorial Hospital, Missouri)

U.S. District Court
SEX OFFENDER
SELF INCRIMINATION
FREE SPEECH AND ASSOCIATION

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 Corr., Sex Offender Management Board)

U.S. District Court
SEX DISCRIMINATION
EQUAL PROTECTION
PROGRAMS

Sassman v. *Brown*, 73 F.Supp.3d 1241 (E.D.Cal. 2014). A male prisoner filed a civil rights action against the Governor of California and the Secretary of the California Department of Corrections and Rehabilitation (CDCR), claiming violation of the Equal Protection Clause by exclusion of men from California's Alternative Custody Program (ACP). The California Penal Code allows only female inmates to participate in the voluntary ACP in lieu of confinement in a state prison. The prisoner moved for a preliminary injunction to prevent continued exclusion of male prisoners from ACP based on their gender. The district court denied the motion for an injunction. The district court held that the prisoner had a likelihood of success on the merits of the claim, but that it was unlikely that the prisoner could show irreparable harm absent an injunction. The prisoner had unsuccessfully applied to participate in the ACP and was similarly situated to female state prisoners who applied and were approved. According to the court, where the male prisoner met all gender-neutral eligibility criteria required by regulations implementing the ACP, and assuming that female prisoners and their children would benefit more from ACP than male prisoners and their children, perpetuated the stereotype that women were more fit to parent and more important to their families than men. The court found that restricting applicants to only women state prisoners was not substantially related to the important government interests of family reunification and community reintegration, and thus, the male prisoner had a likelihood of success on the merits of his claim. (Alternative Custody Program, California)

U.S. District Court
RACIAL DISCRIM-INATION
EQUAL PROTECTION

Sherley v. *Thompson*, 69 F.Supp.3d 656 (W.D.Ky. 2014). A state prisoner filed a pro se § 1983 action against the Commissioner of the Kentucky Department of Corrections (DOC), a prison warden, and other prison officials, alleging that his conditions of confinement violated his Eighth Amendment rights, that he was deprived of medical treatment in violation of the Eighth Amendment, and was subjected to race discrimination in violation of the Equal Protection Clause. The district court dismissed the case, in part. The court held that the prisoner stated claims against the warden and prison administrators for violation of his equal protection rights and his conditions of confinement. According to the court, the prisoner stated an Eighth Amendment claim against one prison nurse by alleging that the nurse failed to provide him with appropriate medical treatment for ant bites he sustained, due to his inability to pay for treatment.

The prisoner alleged that the prison had a policy or custom of segregating blacks and non-blacks, and that prison officials refused to place him in a non-black cell to get away from pests in his cell. The court held that the administrators allowed ants to infest his cell for weeks and that as a result, he received ant bites that caused him to scratch until his skin was broken due to severe itching, in violation of his conditions of confinement rights under § 1983 and the Eighth Amendment. (Little Sandy Correctional Complex, Green River Correctional Complex, Kentucky)

U.S. Appeals Court
SEX OFFENDER
DUE PROCESS
EQUAL PROTECTION
PROGRAMS

Stauffer v. *Gearhart*, 741 F.3d 574 (5th Cir. 2014). A state prisoner brought a civil rights action against prison employees in their individual and official capacities, claiming that they violated his First Amendment rights by confiscating his magazines under a Sex Offender Treatment Program (SOTP) rule, violated his due process rights by failing to provide any meaningful review of a mailroom employee's decisions, and violated his equal protection rights by applying the policy solely to inmates participating in the SOTP. The district court granted summary judgment for the prison employees. The prisoner appealed. The appeals court affirmed. The court held that the state prison's rule providing for confiscation of the magazines of prisoners in the Sex Offender Treatment Program (SOTP) was neutral, as required to not violate the prisoner's free speech rights, despite not banning newspapers and religious materials, since the purpose of the rule was to facilitate treatment and the prison did not have any ulterior motive in promulgating the rule. According to the court, the rule was rationally related

to the prison's legitimate interest in sex-offender rehabilitation, as required to not violate the prisoner's free speech rights, since the rule placed restrictions on reading material in order to facilitate treatment by preventing distractions. The court noted that the magazines that the prisoner requested undermined the goals of the SOTP in the professional judgments by prison officials tasked with overseeing program. According to the court, confiscation of the magazines of the prisoner in the SOTP, pursuant to the rule, did not deprive the prisoner of due process, since the prisoner could, and did, use the prison's grievance system to claim that he had been wrongly denied those magazines, and prison administrators responded by investigating his claims and giving written justification that explained why he was not entitled to relief. (Texas Department of Criminal Justice, Goree Unit)

U.S. District Court
EXPUNGEMENT
PRIVACY

Taha v. *Bucks County*, 9 F.Supp.3d 490 (E.D.Pa. 2014). An arrestee brought an action against a county, a county correctional facility, and companies that operated websites publishing mug shot and arrest information, alleging that the defendants published his expunged arrest record in violation of Pennsylvania's Criminal History Record Information Act (CHRIA), and that the companies violated a Pennsylvania statute prohibiting the unauthorized use of a name or likeness and committed an invasion-of-privacy tort of "false light." The company moved to dismiss. The district court granted the motion in part and denied in part. The court held that the arrestee's allegations that the company selectively published his expunged arrest record and mug shot on its website in order to falsely portray him as a criminal, and created a false impression regarding his criminal history and character, were sufficient to state a "false light" claim against the company under Pennsylvania law. (Citizens Information Associates, LLC, Bucks County Correctional Facility, Pennsylvania)

U.S. District Court
CIVIL COMMITMENT
SEX OFFENDER

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. Appeals Court
SEX OFFENDER
CIVIL COMMITMENT

U.S. v. *Antone*, 742 F.3d 151 (6th Cir. 2014). The government filed a certification attesting that an inmate was a sexually dangerous person under the Adam Walsh Child Protection and Safety Act, and seeking the inmate's civil commitment. The district court committed the inmate to civil custody. The inmate appealed. The appeals court reversed. The court held that the government failed to establish by clear and convincing evidence that the sex offender, who suffered from an antisocial personality disorder and polysubstance abuse, would have serious difficulty in refraining from sexually violent conduct or child molestation if released. The court noted that the offender did not test positive for any substances or engage in any sexual misconduct or hostility toward women during his extended incarceration, the offender had no disciplinary infractions, the offender completed his GED as well as other professional programs, and readily sought out the prison's mental health resources, and the offender expressed remorse for his past acts. (Federal Bureau of Prisons, FCI–Butner, North Carolina)

U.S. Appeals Court
CRIPA- Civil Rights of Institutionalized Persons Act

U.S. v. *Territory of Virgin Islands*, 748 F.3d 514 (3rd Cir. 2014). The United States commenced an action against the Territory of the Virgin Islands pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), seeking to enjoin the Virgin Islands from allegedly depriving inmates at a correctional facility of their Eighth Amendment rights. The district court denied an inmate's motion to intervene and the inmate appealed. The appeals court affirmed. The appeals held that the inmate did not make a compelling showing that his interests were not adequately represented, and the United States would have been prejudiced by allowing the inmate to intervene. (Golden Grove Adult Correctional Facility, St. Croix, United States Virgin Islands)

U.S. District Court
ALIENS
FALSE IMPRISONMENT

Villars v. *Kubiatowski*, 45 F.Supp.3d 791 (N.D.Ill. 2014). A detainee, a Honduran citizen who had been arrested for driving under the influence and fleeing officers after they effectuated a traffic stop of his vehicle, and subsequently had been held on an immigration detainer from Immigration and Customs Enforcement (ICE) and then on a federal material witness warrant, brought a pro se action against a village, police chief, police officers, sheriff, jail deputies, and an Assistant United States Attorney. The detainee alleged violation of his due process, equal protection, Fourth Amendment, and Eighth Amendment rights. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The district court held that: (1) the detainee stated a claim against the village defendants for violation of his Fourth Amendment and due process rights in connection with his detention after he had posted bond; (2) the detainee stated a claim for violation of his consular rights under Article 36 of the Vienna Convention on Consular Relations; (3) the detainee stated a claim against the county defendants for violation of his Fourth Amendment and due process rights in connection with his 29-hour detention; and (4) absolute prosecutorial immunity did not shield the AUSA from the plaintiff's claims that the AUSA violated his Fourth Amendment and due process rights, along with the federal material witness statute and the federal rules of criminal procedure. The court noted that following the detainee's post-arrest transfer to the county's custody, he was detained for approximately 29 hours pursuant to an Immigration and Customs Enforcement (ICE) detainer request, and that the county lacked probable cause that the detainee had violated a federal criminal law, but instead detained him while the federal government investigated to determine whether or not he had, in violation of the detainee's Fourth Amendment and procedural and substantive due process rights. (Village of Round Lake Beach, Lake County Jail, Illinois)

U.S. District Court
RELIGION
DISCRIMINATION

W*illiams* v. *King*, 56 F.Supp.3d 308 (S.D.N.Y. 2014). A state inmate brought a § 1983 action alleging that prison officials violated his rights to free exercise of religion and due process. 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 issues of fact as to: (1) whether the alleged burdens imposed on the free exercise rights of Shiite Muslim State prison inmates actually served, or were intended to serve, any legitimate penological interests; (2) whether the inmate was denied the right to participate in a religious celebration despite having complied with the prison's registration policy; and, (3) whether the prison's selective registration policy was reasonably related to legitimate penological interests rather than motivated by discriminatory purposes.

The court found that the prisoner's allegations that the prison's Muslim chaplain and superintendent of programs were personally involved in the discriminatory policies were sufficient to state a free exercise claim and that the chaplain and superintendent were not entitled to qualified immunity. The inmate alleged that the chaplain made various decisions regarding inmates' celebrations of Muslim holy days which had the effect of allowing Sunni Muslim inmates to follow their practices while not allowing Shiite Muslim inmates to follow certain Shiite practices. He also alleged that the superintendent, despite responding to several grievances based on the chaplain's alleged denials of religious accommodations, allowed those denials to continue and consciously administered an alleged selectively discriminatory policy. (Woodbourne Correctional Facility, New York)

2015

U.S. District Court
RELIGION
EQUAL PROTECTION
QUALIFIED IMMUNITY

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
ADA- Americans with Disability Act
SEGREGATION

Armstrong v. *Brown*, 103 F.Supp.3d 1070 (N.D. Ca. 2015). Disabled state prisoners filed a motion for further enforcement of an injunction applicable to all California Department of Corrections and Rehabilitation (CDCR) prisons, alleging that corrections officials were continuing to place class members in administrative segregation due to a lack of accessible housing, in violation of the district court's orders and the Americans with Disabilities Act (ADA). The district court granted the motion, holding that further enforcement would not be limited to the least compliant correctional institutions. The court noted that while the majority of the violations took place at one institution, the violations occurred at other institutions as well, and that transfers of disabled prisoners into non-complying institutions occurred with the involvement of CDCR officials. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
ADA- Americans With Disabilities Act
RA- REHABILITATION ACT
CONDITIONS

Ball v. *LeBlanc*, 792 F.3d 584 (5th Cir. 2015). Death row inmates brought a § 1983 action against a state department of corrections and state officials, seeking declaratory and injunctive relief based on allegations that heat in the prison violated the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). Following a bench trial, the district court sustained the Eighth Amendment claims, rejected the disability claims, and issued a permanent injunction requiring the state to install air conditioning throughout death row. The department and officials appealed and the inmates cross-appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that: (1) the district court did not abuse its discretion by admitting evidence of, or relying on heat index measurements of death-row facilities; (2) the district court did not clearly err in finding that heat in death-row cells posed a substantial risk of serious harm to inmates and that prison officials were deliberately indifferent to the risk posed to death-row inmates by the heat in prison cells; (3) housing of death-row inmates in very hot prison cells without sufficient access to heat-relief measures violated the Eighth Amendment; (4) inmates were not disabled under ADA or RA; and (5) permanent injunctive relief requiring the state to install air conditioning throughout death-row housing violated the Prison Litigation Reform Act (PLRA), where acceptable remedies short of facility-wide air conditioning were available. (Department of Public Safety and Corrections, Louisiana State Penitentiary)

U.S. District Court
SEXUAL HARASS-MENT
SEARCH
GRIEVANCE
CONSPIRACY
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
PROGRAMS

Buckley v. *State Correctional Institution-Pine Grove*, 98 F.Supp.3d 704 (M.D. Pa. 2015). A state prisoner, a young adult offender, brought an action alleging that a prison had violated the Individuals with Disabilities Education Act (IDEA) by failing to provide him with a free appropriate public education, and appealing a ruling to the contrary by an administrative hearing officer. The parties filed cross motions for judgment on the supplemented administrative record. The district court held that the prison violated IDEA, and the prison was required to provide compensatory education as a remedy. The court noted that the prison failed to make a particularized determination that the security interest specific to the prisoner could not otherwise be accommodated, by effectively nullifying the prisoner's individualized education program (IEP), and by not providing a free appropriate public education. After placing the prisoner in restrictive housing in response to the prisoner's assaultive behavior and rules violations, the prison did not modify the prisoner's IEP, but instead merely applied a blanket policy requiring all prisoners in restrictive housing to receive in-cell instruction only, using non-individualized "self-study" packets and with access to a teacher only once or twice a week through a locked solid metal door in a cacophonously loud housing unit. (SCI–Pine Grove, Pennsylvania)

U.S. Appeals Court
SEXUAL ABUSE

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
TELEPHONE COSTS

DeBrew v. *Atwood*, 792 F.3d 118 (D.C. Cir. 2015). A federal inmate brought an action alleging that the Bureau of Prison's (BOP) response to his request for documents violated the Freedom of Information Act (FOIA), that the BOP and its officials violated the Takings and Due Process Clauses by retaining interest earned on money in inmates' deposit accounts, and that officials violated the Eighth Amendment by charging excessively high prices for items sold by the prison commissary and for telephone calls. The district court entered summary judgment in the BOP's favor and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the BOP did not violate FOIA by failing to produce recordings of the inmate's telephone conversations and that the inmate's failure to exhaust his administrative remedies precluded the court from reviewing whether the BOP conducted an adequate search. The court found that the Bureau of Prisons' (BOP) alleged practice of charging excessively high prices for items sold by prison commissary and for telephone calls did not violate Eighth Amendment. (Federal Bureau of Prisons, Washington, D.C.)

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

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
DUE PROCESS
FALSE IMPRISONMENT
CONDITIONS

Fant v. *City of Ferguson*, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city's policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents' Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city's failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly stated a pattern and practice of Due Process violations; (4) allegations of conditions of confinement were sufficient to state a plausible claim for Due Process violations; and (5) the residents could not state an Equal Protection claim for being treated differently, with respect to fines, than civil judgment debtors. The court noted that the residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. (City of Ferguson, Missouri)

U.S. District Court
DEATH
MEDICAL CARE
PRETRIAL DETAINEES

Fisher v. *Miami-Dade County*, 114 F.Supp.3d 1247 (S.D. Fla. 2015). A former pre-trial detainee brought a § 1983 action against a county, alleging that during his detention in a county jail, county employees were deliberately indifferent to his serious medical needs. The county moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the detainee: (1) sufficiently alleged that the county had policy that constituted deliberate indifference to jail detainees' serious medical needs (2) sufficiently alleged that County policymakers had notice of a pattern or practice of deliberate indifference to detainees' serious medical needs; and (3) sufficiently alleged that county policymakers failed to take action after being put on notice of the pattern of deliberate indifference to detainees' serious medical needs. According to the court, detailed allegations of a pattern of deliberate indifference to county jail detainees' medical needs, including 117 inmate deaths in the years preceding the plaintiff's detention, and 20 specific instances in which county employees withheld necessary medical care from detainees, or provided insufficient medical care, resulting in severe injury or death to those detainees, were sufficient to state a claim for municipal liability under § 1983. The court noted that direct complaints by detainees had been made to county officials, there were widespread news accounts in local newspapers and on local news television programs regarding treatment of detainees, the Department of Justice (DOJ) had conducted a three-year DOJ investigation into county employees' violations of detainees' constitutional rights, including the right to medical care, and there were more than half a dozen judicial orders from federal, state and county courts relating to detainees' medical treatment. The court noted that the detainee sufficiently alleged that county policymakers chose not to take action after being put on notice of county employees' deliberate indifference to jail detainees' serious medical needs, where the detainee alleged that systemic deficiencies occurred, including two deaths, following the mayor's promise to correct such deficiencies. (Miami-Dade Corrections and Rehabilitation Department, Florida)

U.S. District Court
VERBAL HARASSMENT

Gannaway v. *Prime Care Medical, Inc*., 150 F.Supp.3d 511 (E.D. Pa. 2015). A state inmate brought § 1983 action against Pennsylvania Department of Corrections (DOC) employees, private companies and healthcare professionals contracted to provide medical services to DOC institutions, alleging that he received inadequate medical treatment throughout his incarceration, in violation of the Eighth Amendment, and that he was retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motions. The court held that private physicians employed by the vendor which contracted to provide medical services to state inmates were acting under the color of state law for the purposes of inmate's § 1983 claim that he received inadequate medical treatment in connection with an "internal stitch" from prior surgery, in violation of the Eighth Amendment. The court noted that the physicians consistently provided the inmate with medical care throughout his incarceration, and there was no indication that the physicians were aware of, or acquiesced in, the inmate's alleged deprivation of food while in a restricted housing unit (RHU). The court found that the medical providers were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, where the inmate received extensive medical treatment while in DOC custody, including regular medical visits, prescriptions for medication to treat pain, acid reflux, high blood pressure, and constipation, and various diagnostic testing. (Penn. State Corr. Inst. (SCI) Rockview, and Prime Care Medical).

U.S. District Court
JUVENILE
PAROLE
EQUAL PROTECTION
DUE PROCESS

Hayden v. *Keller*, 134 F.Supp.3d 1000 (E.D.N.C. 2015). A prisoner, a non-homicide juvenile offender, brought a § 1983 action against a parole commission and others, alleging denial of his constitutional right to be free from cruel and unusual punishment and due process under the Eighth and Fourteenth Amendments as a result of being denied a meaningful opportunity to obtain parole release. The parties moved for summary judgment. The district court denied the defendants' motion and granted the prisoner's motion in part. The court held that the prisoner was denied a meaningful opportunity to obtain parole release based on demonstrated maturity and rehabilitation,

as required by the Eighth Amendment. According to the court, the parole commissioners and case analysts did not distinguish parole reviews for juvenile offenders from adult offenders, thus failing to consider the children's diminished culpability and heightened capacity for change. The court noted that caseloads were enormous, with each parole case analyst having responsibility for approximately 4,338 offenders, and the opportunity to appear for a parole hearing seemed to exist mainly for those who were on notice, with no notice to the offender being required. (North Carolina Post–Release Supervision and Parole Commission, and North Carolina Department of Public Safety)

U.S. District Court
DISCRIMINATION
ADA-Americans with Disabilities Act
EXERCISE
RELIGION

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.

The court also found that the preliminary injunction, targeting discrete county jail conditions, would be in the public interest where the public had an interest in preventing the spread of communicable diseases, enforcing the Americans with Disabilities Act (ADA), and eliminating discrimination on the basis of disability. (Monterey County Jail, California)

U.S. Appeals Court
GRIEVANCE
PLRA- Prison Litigation Reform Act
USE OF FORCE

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. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER
SEXUAL ABUSE
HOMOSEXUAL

Hughes v. *Farris*, 809 F.3d 330 (7th Cir. 2015). A detainee civilly committed as a sexually violent person filed a § 1983 action against a supervisor and the director of the facility, alleging he was sexually abused by an employee, in violation of the Fourteenth Amendment. He further alleged that as a result of his complaints of abuse, his treatment was discontinued, in violation of the First Amendment and the Due Process Clause of the Fourteenth Amendment. The district court dismissed the action, and the detainee appealed. The appeals court vacated and remanded, finding that the detainee's complaint stated a claim against the supervisor for violation of the Fourteenth Amendment based on threats of grave violence based on the detainee's homosexuality, and the complaint stated a claim for retaliation under both the First and Fourteenth Amendments. (Treatment and Detention Facility, Rushville, Illinois)

U.S. Appeals Court
FREE SPEECH AND ASSOCIATION
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
FREE SPEECH AND ASSOCIATION

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
VICTIM
FREE SPEECH AND ASSOCIATION

Jamal v. *Kane*, 96 F.Supp.3d 447 (M.D. Pa. 2015). Incarcerated individuals who engaged in written and oral human rights advocacy, prisoner advocacy groups, and entities that relied on prisoners' speech, brought actions alleging that Pennsylvania's Revictimization Act violated the First Amendment. The Act authorized civil actions seeking injunctive and other relief whenever an offender engaged in any "conduct which perpetuates the continuing effect of the crime on the victim." After several actions were consolidated, the state attorney general and a district attorney moved to dismiss. The district court granted the motion in part and denied in part. The court held that the plaintiffs lacked standing to bring an action against the district attorney, but that the plaintiffs had standing to bring a suit against the attorney general, even though the Act had not been enforced against anyone since its enactment,. According to the court, the Act was plainly applicable to the plaintiffs, the attorney general failed to foreswear enforcement of the Act, and the Act authorized any victim of a personal injury crime or any family member of a homicide victim to file suit. (Pennsylvania's Crime Victims Act)

U.S. District Court
ALIENS
TORTURE
DUE PROCESS
MILITARY FACILITY CONDITIONS

Jawad v. *Gates*, 113 F.Supp.3d 251 (D.D.C. 2015). A plaintiff, a citizen of Afghanistan and a former detainee at the United States Naval Facility at Guantanamo Bay, Cuba, and at other U.S. military bases, brought an action against the U.S. Government and four individual defendants under the Alien Tort Claims Act (ATCA), the Federal Tort Claims Act (FTCA), the Torture Victim Protection Act (TVPA), and the Fifth and Eighth Amendments. The plaintiff alleged that he was detained without adequate due process, tortured, and otherwise subjected to inhumane treatment. Government moved to dismiss the ATCA and FTCA claims, and the individual defendants moved to dismiss the TVPA and constitutional claims. The district court granted the motions, finding that the United States was properly substituted as the defendant, the complaint failed to state claim for violation of TVPA, and the Military Commissions Act (MCA) divested the district court of jurisdiction to hear claims regarding a former detainee's detention, transfer, treatment, and conditions of confinement. (Forward Operating Base 195, Afghanistan, and United States Naval Base in Guantanamo Bay, Cuba)

U.S. District Court
CIVIL COMMITMENT
SEX OFFENDER
FALSE IMPRISONMENT

Karsjens v. *Jesson*, 109 F.Supp.3d 1139 (D. Minn. 2015). Patients civilly committed to the Minnesota Sex Offender Program (MSOP) brought an action against various officials and employees of the MSOP pursuant to § 1983, asserting Fourteenth Amendment due process clause challenges to the Minnesota statute governing civil commitment and treatment of sex offenders. The district court granted the patients' motion for class certification and granted in part and denied in part the officials' motion to dismiss. After a bench trial, the court held that: (1) the patients had standing to bring a class action; (2) the statute was unconstitutional on its face; and (3) the statute was unconstitutional as applied.

According to the court, each patient was harmed by not knowing whether he continued to meet the criteria for commitment through regular risk assessments, each patient was harmed by the program's structural problems that resulted in delays, patients were deprived of their right to liberty, and a favorable decision would likely redress their injuries. The court noted that no patient had been released from MSOP in over 20 years and MSOP failed to initiate the petitioning process when it was aware that individual patients were likely to meet statutory discharge criteria. (Minnesota Sex Offender Program)

U.S. District Court
MEDICAL CARE
EQUAL PROTECTION

Kelly v. *Ambroski*, 97 F.Supp.3d 1320 (M.D. Ala. 2015). An African–American prisoner who had injured his back brought a § 1983 action against state prison officials, medical personnel, and the company providing prison medical services, alleging deliberate indifference to his serious medical need in violation of the Eighth Amendment, violation of his Fourteenth Amendment right to equal protection, and various state claims. The defendants moved for summary judgment. The district court granted the motion. The court held that the prisoner: (1) failed to show that the company maintained a policy or custom which contributed in any way to the claimed constitutional violations, as required to support a § 1983 claim; (2) did not show that the physician and the prison's health services administrator were deliberately indifferent to his back pain; (3) failed to establish that a warden and an assistant warden had any direct involvement in his medical treatment, as required to support a § 1983 claim against them for deliberate indifference to his serious medical need; and (4) the prisoner's conclusory allegations were insufficient to support an equal protection claim. According to the court, the African–American prisoner had no personal knowledge of white prisoners' medical and treatment history or their individual diagnoses to establish that they were similarly situated to him, and allegations did not establish that decisions by prison officials and medical personnel regarding his medical care were motivated by his race. The court noted that medical evidence showed that medical staff regularly examined the prisoner for his complaints of back pain, prescribed him pain medication, scheduled multiple diagnostic procedures for him, and sent him to several specialists outside of the prison, and the fact that the prisoner disagreed with the efficacy of

the treatment recommended or simply preferred a different course of treatment did not amount to a constitutional claim. (Bibb Correctional Facility, and Corizon Correctional Healthcare, Alabama)

U.S. District Court
ADA- Americans with Disabilities Act
VISITS
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
VERBAL HARASSMENT
DISCIPLINE

Lewis v. *Wetzel*, 153 F.Supp.3d 678 (M.D. Pa. 2015). A state prisoner brought an action against prison officials under § 1983, alleging that officials violated his constitutional rights by harassing him, filing false misconduct reports, and denying him due process at disciplinary hearings. The defendants moved to dismiss. The district court granted the motion in part. The court held that the prisoner's allegations regarding verbal harassment by prison officials were sufficient to state a § 1983 claim only with respect to an incident where a corrections officer's verbal threat allegedly escalated into violence. The court noted that other incidents did not escalate beyond mere words and did not involve threats conditioned on the prisoner's exercising a constitutional right. (Pennsylvania State Correctional Inst. (SCI) Graterford).

U.S. District Court
ALIENS
FALSE IMPRISONMENT

Mayorov v. *United States*, 84 F.Supp.3d 678 (N.D.Ill. 2015). A former state prisoner sued the United States, pursuant to the Federal Tort Claims Act (FTCA), claiming negligence and false imprisonment based on Immigration and Customs Enforcement (ICE) issuing an immigration detainer against him, despite his United States citizenship, causing him to spending 325 days in prison that he otherwise would not have served due to the Illinois Department of Corrections (IDOC) rules prohibiting a detainee from participating in a boot camp as an alternative to a custodial prison sentence. The parties moved for summary judgment. The district court held that fact issues as to whether the government breached a duty to reasonably investigate the prisoner's citizenship status prior to issuing an Immigration and Customs Enforcement (ICE) detainer. (Illinois Impact Incarceration Program)

U.S. District Court
SEX OFFENDER

McGuire v. *Strange*, 83 F.Supp.3d 1231 (M.D.Ala. 2015). A sex offender registrant, who had previously been convicted of sexual assault in Colorado, brought an action against an Alabama city, county, and state officials, challenging the Alabama Sex Offender Registration and Community Notification Act (ASORCNA), which required a citizen to register as a homeless sex offender in-person at both the city police department and the county sheriff's department every week. After the defendants' motion to dismiss was granted in part and denied in part, leaving only the registrant's claim that ASORCNA violated the Ex Post Facto Clause, a bench trial was held. The district court held that the in-person registration requirement and the travel-permit requirement were so punitive in effect as to negate the Alabama legislature's stated nonpunitive intent, in violation of the Ex Post Factor Clause. (City of Montgomery and Montgomery County, Alabama)

U.S. Appeals Court
SEX OFFENDER
MEDICAL CARE

Mead v. *Palmer*, 794 F.3d 932 (8th Cir. 2015). A civilly committed sex offender brought a § 1983 action against a nurse and the civil commitment unit's director, alleging that they were deliberately indifferent to his serious medical needs. The district court denied the defendants' motion for qualified immunity from suit. The defendants appealed. The appeals court reversed and remanded. The court held that the nurse and the civil commitment unit's director did not deny the offender essential dental care by refusing his request for dentures, and thus were not deliberately indifferent to his serious medical needs in violation of the Fourteenth Amendment. The court noted that the offender was never prescribed dentures as a medical necessity, and despite his claims of inability to chew and discomfort, he was still able to eat and consume adequate calories and nutrition, he actually gained weight, and he never asked for a soft diet. (Iowa Department of Human Services, CCUSO Unit Cherokee Mental Health Institute)

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
CONSPIRACY
USE OF FORCE
PRETRIAL DETAINEES

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
MENTAL ILLNESS
RIGHTS RETAINED
CLASSIFICATION

Trueblood v. *Washington State Dept. of Social and Health*, 101 F.Supp.3d 1010 (W.D. Wash. 2015). Members of a class of pretrial detainees suspected of being mentally incompetent, the next friends of such pretrial detainees, and a disability rights organization brought an action seeking a permanent injunction and a declaratory judgment establishing a time frame within which due process required that the Department of Social and Health Services provide a competency evaluation and restoration of services to such detainees. After a bench trial, the district court held that: (1) the disability rights organization had standing to bring the action; (2) the next friends of the pretrial detainees had standing to bring an action; and (3) due process balancing favored the interests of the pretrial detainees, and thus seven days was the maximum justifiable period of incarceration while awaiting a competency evaluation and restoration of services. A permanent injunction was ordered. The court noted that jails could not provide an environment or type of care required for such detainees, especially as they were often held in solitary confinement without access to medication, and that confinement in jails actively damaged detainees' mental condition and each additional day of incarceration caused further deterioration of the detainees' mental health, increased the risk of suicide and victimization by other inmates. (State of Washington, Department of Social and Health Services)

U.S. Appeals Court
ADA- Americans with Disabilities Act
DISCRIMINATION
MEDICAL CARE
CONDITIONS
REHABILITATION ACT

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)

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U.S. Appeals Court
SEX OFFENDER
PRIVACY

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)